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An action for annulment of sale like the one filed by petitioners against private respondent is not prejudicial to an action for unlawful detainer.[11]

"The question is, may the pendency of such an action for consignation or specific performance, or annulment of a sale, as in this case, be successfully pleaded in abatement of an action for unlawful detainer? This Court has invariably given a negative answer."[12]

ACCORDINGLY, the instant petition is *DISMISSED* and the decision of the Court of Appeals in C.A. G.R. SP No. 36948 is hereby *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

Bellosillo (Chairman), and *Mendoza, JJ.,* concur.

Buena, J., no part.

SECOND DIVISION

[G.R. No. 125931. September 16, 1999]

UNION MOTORS CORPORATION, BENITO S. CUA, and CHARLOTTE C. CUA, *petitioners, vs.* **THE NATIONAL LABOR RELATIONS COMMISSION and PRISCILLA D. GO,** *respondents.*

SYNOPSIS

Petitioner UMC hired private respondent Go as its Administrative and Personnel Manager. Later, she was appointed

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[11] *Arcal v. Court of Appeals, supra* at note 10; see also *Wilmon Auto Supply Corp. v. Court of Appeals*, 208 SCRA 108 (1992).

[12] *Demamay v. Court of Appeals*, 186 SCRA 608, at 612-613 (1990).

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Assistant to the President and Administrative and Personnel Manager by the Board of Directors. Due to alleged differences Ms. Go had with Ms. Cua, the Vice-President/Treasurer of the Board, she stopped reporting for work. Allegedly, while a workable arrangement was being made to settle the differences between Ms. Cua and Ms. Go, the latter was advised that her resignation had been accepted. Insisting that she did not resign, Go filed a complaint for constructive illegal dismissal. Petitioners denied that Go was illegally dismissed and asserted abandonment of work on her part. The Labor Arbiter ruled that there was no illegal dismissal. On appeal to the NLRC, however, petitioners contended that she was a corporate officer and the issue relating to her removal was an intra-corporate dispute. Hence, the jurisdiction lies with the Securities and Exchange Commission. Still, the NLRC reversed and set aside the decision of the Labor Arbiter.

Private respondent's position is a corporate office under the by-laws of UMC. One who is included in the by-laws of an association in its roster of corporate officers is an officer of said corporation and not a mere employee. Hence, the charge filed by Ms. Go against petitioners partake of the nature of an intra-corporate dispute, and the determination of the rights of Ms. Go and the concomitant liability of the petitioners arising from her ouster as a corporate officer is an intra-corporate controversy. The case, being a dispute between a corporation and one of its officers, is subject to the jurisdiction of the SEC.

SYLLABUS

1. **REMEDIAL LAW; JURISDICTION; NLRC AND THE SEC; HOW DETERMINED.**— In the present case, we once again face the tug-of-war between the jurisdiction of the NLRC and the SEC. It is the private respondent's stand that she is but mere employee of the petitioner corporation. A high-ranking employee, but an employee nonetheless, who was illegally dismissed. Hence, no grave abuse of discretion was committed by the NLRC when it assumed jurisdiction over her case. Petitioners, however, vehemently insist that she was a corporate officer who had been ousted from office. Thus, private respondent's dismissal squarely falls within the jurisdiction of the SEC as an intra-corporate dispute. A proper resolution of

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this case thus entails determining whether the private respondent is a mere employee (albeit high in rank) or a corporate officer. To determine which body has jurisdiction over this case requires considering not only the relationship of the parties, but also the nature of the question that is the subject of their controversy.

2. **CORPORATION LAW; CORPORATE OFFICERS.**— There are specifically three officers which a corporation must have under the statute: president, secretary, and treasurer. However, the law does not limit corporate officers to these three. Section 25 gives corporations the widest latitude to provide for such other offices, as they may deem necessary. The by-laws may and usually do provide for such other officers, *e.g.*, vice-president, cashier, auditor, and general manager. The by-laws of petitioner corporation are no exception. Article V (1) thereof states that one of the powers vested in the Board of Directors is to "appoint such other officers as they may deem necessary who shall have such power and shall perform such duties as may from time to time be prescribed by the Board."

3. **ID.; ID.; WHEN SO PROVIDED IN THE BY-LAWS AND SECRETARY'S CERTIFICATE.**— Private respondent's position as Assistant to the President and Personnel & Administrative Manager is a corporate office under the by-laws of UMC. The Secretary's Certificate lists the position of Assistant to the President and Personnel & Administrative Manager as a corporate office. We have held that one who is included in the by-laws of an association in its roster of corporate officers is an officer of said corporation and not a mere employee. It is also settled that if found regular on its face, a Secretary's Certification is sufficient to rely on, and there is no need to investigate the truth of the facts contained in such certification. *No reason has been shown here to doubt the veracity of the* said corporate secretary's certification. Hence, the inescapable conclusion is that private respondent was an officer of petitioner UMC.

4. **ID.; INTRA-CORPORATE DISPUTE.**— Under Section 23 of the Corporation Code, directors are charged with the control and management of their corporation. It is settled that they may appoint officers and agents and as incident to this power of appointment, they may discharge those appointed. It becomes clear then that the charges filed by Ms. Go against petitioners

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partake of the nature of an intra-corporate dispute. Similarly, the determination of the rights of Ms. Go and the concomitant liability of the petitioners arising from her ouster as a corporate officer, is an intra-corporate controversy.

5. **ID.; SECURITIES AND EXCHANGE COMMISSION; JURISDICTION; DISPUTE BETWEEN A CORPORATION AND ONE OF ITS OFFICERS.**— For the SEC to take cognizance of a case, the controversy must pertain to any of the following relationships: (a) between the corporation, partnership or association and the public; (b) *between the corporation, partnership or association and its stockholders, partners, members, or officers* (italics for emphasis); (c) between the corporation, partnership, or association and the state so far as its franchise, permit, or license to operate is concerned; and (d) among the stockholders, partners, or associates themselves. *The instant case, in our view, is a dispute between a corporation* and one of its officers. As such, Ms. Go's complaint is subject to the jurisdiction of the SEC, and not the NLRC. Interpreting Section 5 of Presidential Decree No. 902-A, we have consistently ruled that it is the SEC that has exclusive and original jurisdiction over controversies involving removal from a corporate office.

6. **REMEDIAL LAW; JURISDICTION; ESTOPPEL; NOT APPLICABLE TO CONFER JURISDICTION WHERE THERE IS NONE.**— Private respondent faults petitioners for failing to raise the issue of lack of jurisdiction by the NLRC at the earliest possible time. She contends that since the petitioners actively participated in the proceedings before the Labor Arbiter and the NLRC, they are now estopped from assailing the jurisdiction of the NLRC. Private respondent's reliance on the principle of estoppel to justify the exercise of jurisdiction by the NLRC over her case is misplaced. The long-established rule is that jurisdiction over a subject matter is conferred by law. Estoppel does not apply to confer jurisdiction to a tribunal that has none over a cause of action. Where it appears that the court or tribunal has no jurisdiction, then the defense may be interposed at any time, even on appeal or even after final judgment. Moreover, the principle of estoppel cannot be invoked to prevent this court from taking up the question of jurisdiction. To conclude, we find that the NLRC erred in assuming jurisdiction over, and thereafter in failing to dismiss, the private respondent's complaint for illegal dismissal against petitioners,

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because the NLRC is without jurisdiction on the subject matter of the controversy.

APPEARANCES OF COUNSEL

Eufemio Law Offices for petitioners.
Quasha Ancheta Pena & Nolasco for private respondent.

D E C I S I O N

QUISUMBING, *J.*:

This petition for *certiorari* and prohibition, under Rule 65 of the Rules of Court, seeks to set aside the decision dated March 29, 1996, of the National Labor Relations Commission in NLRC NCR CA No. 008119-95. It also assails the NLRC resolution, dated May 28, 1996, denying petitioners' motion for reconsideration. Petitioners also pray that NLRC desist from further proceedings in said case.

Petitioner Benito S. Cua is the father of Charlotte C. Cua. They are, respectively, the President and Vice-President/ Treasurer of petitioner UMC. Hereafter, they will be referred to respectively as Mr. Cua and Ms. Cua. Private respondent Priscilla Go was, originally, the complainant in a case for illegal dismissal filed against petitioners. Hereafter, she will be referred to as Ms. Go.

The facts of the case, as culled from the records, are as follows:

On June 17, 1981, UMC hired Ms. Go as its Administrative and Personnel Manager. On February 13, 1982, she was appointed Treasurer while concurrently serving as Administrative and Personnel Manager.

Seven years later, UMC's Board of Directors effected a top-level corporate revamp. Ms. Cua was appointed Vice-President/Treasurer. Ms. Go was in turn appointed Assistant to the President and Administrative and Personnel Manager by the Board.[1] Ms. Go accepted the appointment on the condition

[1] Records, p. 58.

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that she would report solely and directly to the UMC President, Mr. Cua.

On November 2, 1989, however, Mr. Cua issued an inter-office memorandum advising Ms. Go that she would be under the direct supervision of Ms. Cua, the Vice-President/Treasurer.[2]

On July 15, 1991, UMC Service Manager Reymundo M. Varilla requested Ms. Go for the assignment of one Analyn Aldea to his department for the duration of her contractual employment. Ms. Go denied the request. The denial was based on the lack of an official written advice from Ms. Cua.[3]

On July 18, 1991, Ms. Cua issued a memorandum-reminder stating that Ms. Cua was Ms. Go's immediate superior. The memorandum went on to say that "[any] verbal, written, taped or any other form of communication advice...will constitute official advice..."[4] Ms. Cua further said that Ms. Go had been given "verbal advice" regarding Aldea's transfer of assignment.

That memorandum prompted Ms. Go to write Mr. Cua regarding her intention to "withdraw" given the escalating level of tension between her and Ms. Cua.[5]

On July 19, 1991, Ms. Go stopped reporting for work. She claimed she had gone on leave to avoid further clashes between her and Ms. Cua.

On August 7, 1991, Mr. Cua designated one Nancy T. Borras as Administrative and Personnel Consultant in the absence of Ms. Go. Meanwhile, Ms. Go met with Mr. Cua and UMC Chairman Gilbert Dee, Sr. She was advised to extend her leave until her differences with Ms. Cua could be resolved.

On September 30, 1991, Ms. Go wrote Mr. Cua requesting him to come up with a concrete plan to implement his

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[2] *Id.* at 60.

[3] *Id.* at 62.

[4] *Id.* at 125.

[5] *Id.* at 64.

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commitment to draw up a workable arrangement between her and Charlotte Cua.

On November 6, 1991, however, Mr. Cua wrote private respondent a letter advising her that he was accepting her resignation.[6]

Insisting that she did not resign and hence, an acceptance of her resignation could not be possible, Ms. Go then filed a complaint for constructive/illegal dismissal with the Labor Arbiter. Her case was docketed as NLRC-NCR Case No. 00-01-06745-91. She prayed for reinstatement and payment of backwages, 13th month pay, allowances, and bonuses. She also sought moral damages in the amount of ₱3 million, exemplary damages of no less than ₱500,000.00, and attorney's fees equivalent to 10% of the total monetary claims to be awarded her.

In their reply dated February 24, 1992, petitioners denied that Ms. Go was illegally dismissed. They countered that she had abandoned her job after she had expressed her intention to resign on July 18, 1991. This intent was concretized when she stopped reporting for work the following day.

On November 21, 1994, the Labor Arbiter rendered his decision dismissing the private respondent's complaint. The dispositive portion of the decision reads:

"IN THE LIGHT OF THE FOREGOING CONSIDERATIONS, the separation of the complainant from her service, for whatever cause, must be upheld. The strained relation existing between the parties does not favor the continuous stay of the complainant in the respondent corporation. Be that as it may, the respondents are ordered to extend to the complainant, monetary considerations, equivalent to her one month salary for every year of service rendered. The respondents are, likewise, assessed 10% of the financial considerations awarded as attorney's fees. The rest of the complaints are dismissed for lack of merit.

"SO ORDERED."[7]

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[6] *Id.* at 69.

[7] *Id.* at 204.

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Dissatisfied, Ms. Go seasonably appealed the Labor Arbiter's decision to the NLRC. Her appeal was docketed as NLRC NCR CA No. 008119-95. In her Memorandum of Appeal, she charged the Labor Arbiter with grave error in: (1) failing to hold that she was constructively/illegally dismissed; and (2) failing to appreciate the evidence on record.[8]

In their Reply/Opposition, petitioners initially argued that she was not dismissed, but had voluntarily resigned and abandoned her employment.[9] However, in their Supplemental Reply, petitioners switched tracks. They now contended that she was a corporate officer who had been elected/appointed to the position of Assistant to the President/Administrative and Personnel Manager by the UMC Board of Directors. Any issue relating to her removal from the said posts was therefore an intra-corporate dispute.[10] As such, jurisdiction over the action did not lie with the NLRC but rather with the Securities and Exchange Commission (SEC), pursuant to Section 5 of Presidential Decree No. 902-A which provides:

"SECTION 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

x x x x x x x x x

[c] Controversies in the election or appointments of directors, trustees, officers, or managers of such corporations, partnerships, or associations."

Petitioners reinforced their arguments by pointing to this Court's ruling in *Espino v. NLRC*.[11] We held in *Espino* that a corporate officer's dismissal is always a corporate act and/or

[8] *Id.* at 286.

[9] *Id.* at 337-340.

[10] *Id.* at 343-347.

[11] 240 SCRA 52 (1995).

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intra-corporate controversy and that nature is not altered by the reason or wisdom which the Board of Directors may have in taking such action.[12]

Petitioners then prayed for the dismissal of the case before the NLRC.

On March 29, 1996, the Second Division of the NLRC promulgated its decision in NCR CA No. 008119-95, reversing and setting aside the decision of the Labor Arbiter. The decretal portion of the said decision states:

"WHEREFORE, premises considered, the November 21, 1995 Decision of Labor Arbiter Manuel F. Asuncion is hereby, Reversed and Set Aside and a new one entered finding that complainant-appellant was illegally dismissed. In lieu of reinstatement, respondent Union Motors Corporation is hereby ordered to pay complainant separation pay equivalent to one (1) month pay for every year of service and to pay full backwages computed from date of dismissal (June 19, 1991) up to promulgation of this resolution plus ten percent (10%) of all amounts awarded by way of attorney's fees.

"SO ORDERED."[13]

Petitioners duly filed a motion for reconsideration. Said motion was denied by the NLRC in its resolution dated May 28, 1996.

Unhappy with this turn of events, petitioners filed the instant petition for *certiorari* and/or prohibition, raising the following issues:

1. Whether or not the public respondent NLRC has jurisdiction over the instant complaint for an alleged illegal dismissal from a corporate office;
2. Whether or not the public respondent NLRC acted with grave abuse of discretion in refusing to dismiss the instant case based on lack of jurisdiction over the subject matter, and instead ordering the petitioners to pay separation pay plus backwages to the private respondent;

[12] *Id.* at 62.

[13] *Rollo*, p. 32.

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3. Whether or not the public respondent NLRC should cease and desist from further proceeding with the instant case.[14]

The issues shall be jointly discussed because they are inter-related.

In the present case, we once again face the tug-of-war between the jurisdiction of the NLRC and the SEC. It is the private respondent's stand that she is but mere employee of the petitioner corporation. A high-ranking employee, but an employee nonetheless, who was illegally dismissed. Hence, no grave abuse of discretion was committed by the NLRC when it assumed jurisdiction over her case. Petitioners, however, vehemently insist that she was a corporate officer who had been ousted from office. Thus, private respondent's dismissal squarely falls within the jurisdiction of the SEC as an intra-corporate dispute. A proper resolution of this case thus entails determining whether the private respondent is a mere employee (albeit high in rank) or a corporate officer. To determine which body has jurisdiction over this case requires considering not only the relationship of the parties, but also the nature of the question that is the subject of their controversy.[15]

Section 25 of the Corporation Code provides in part:

"Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the by laws x x x"

Thus, there are specifically three officers which a corporation must have under the statute: president, secretary, and treasurer. However, the law does not limit corporate officers to these three. Section 25 gives corporations the widest latitude to provide for such other offices, as they may deem necessary. The by-laws may and usually do provide for such other officers, *e.g.*, vice-president, cashier, auditor, and general manager. The

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[14] *Id.* at 12.

[15] *Torio v. Court of Appeals*, 230 SCRA 626, 632 (1994).

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by-laws of petitioner corporation are no exception. Article V (1) thereof states that one of the powers vested in the Board of Directors is to "appoint such other officers as they may deem necessary who shall have such power and shall perform such duties as may from time to time be prescribed by the Board."[16]

The records clearly show that private respondent's position as Assistant to the President and Personnel & Administrative Manager is a corporate office under the by-laws of UMC. The Secretary's Certificate of February 3, 1989, lists the position of Assistant to the President and Personnel & Administrative Manager as a corporate office.[17] We have held that one who is included in the by-laws of an association in its roster of corporate officers is an officer of said corporation and not a mere employee.[18] It is also settled that if found regular on its face, a Secretary's Certification is sufficient to rely on, and there is no need to investigate the truth of the facts contained in such certification.[19] No reason has been shown here to doubt the veracity of the said corporate secretary's certification. Hence, the inescapable conclusion is that private respondent was an officer of petitioner UMC.

Section 23 of the Corporation Code provides in part:

"Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted, and all property of such corporations controlled and held by the board of directors or trustees x x x"

Under Section 23 of the Corporation Code, directors are thus charged with the control and management of their corporation. It is settled that they may appoint officers and agents and as incident to this power of appointment, they may discharge those appointed.[20]

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[16] *Rollo*, p. 149.

[17] Records, p. 27.

[18] *Ongkingco v. NLRC*, 270 SCRA 613 (1997).

[19] *Esguerra v. Court of Appeals*, 267 SCRA 380, 382 (1997).

[20] *Myers v. United States*, 272 US 52, 47 S.Ct. 21, 71 L. Ed. 160.

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From all the foregoing, it becomes clear that the charges filed by Ms. Go against petitioners partake of the nature of an intra-corporate dispute. Similarly, the determination of the rights of Ms. Go and the concomitant liability of the petitioners arising from her ouster as a corporate officer, is an intra-corporate controversy. For the SEC to take cognizance of a case, the controversy must pertain to any of the following relationships: (a) between the corporation, partnership or association and the public; (b) *between the corporation, partnership or association and its stockholders, partners, members, or officers* (italics for emphasis); (c) between the corporation, partnership, or association and the state so far as its franchise, permit, or license to operate is concerned; and (d) among the stockholders, partners, or associates themselves.[21] The instant case, in our view, is a dispute between a corporation and one of its officers. As such, Ms. Go's complaint is subject to the jurisdiction of the SEC, and not the NLRC. Interpreting Section 5 of Presidential Decree No. 902-A, we have consistently ruled that it is the SEC that has exclusive and original jurisdiction over controversies involving removal from a corporate office.[22]

Private respondent now faults petitioners for failing to raise the issue of lack of jurisdiction by the NLRC at the earliest possible time. She contends that since the petitioners actively participated in the proceedings before the Labor Arbiter and the NLRC, they are now estopped from assailing the jurisdiction of the NLRC. Private respondent's reliance on the principle of estoppel to justify the exercise of jurisdiction by the NLRC over her case is misplaced.

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[21] *Mainland Construction Co., Inc., v. Movilla*, 250 SCRA 290 (1995).

[22] *Espino v. NLRC, supra; Lozon v. NLRC*, 240 SCRA 1 (1995); *Fortune Cement Corp. v. NLRC*, 193 SCRA 258 (1991), *Cagayan de Oro Coliseum, Inc. v. Office of the MOLE*, 192 SCRA 315 (1990); *Dy v. NLRC*, 145 SCRA 211 (1986); *Philippine School of Business Administration v. Leano*, 127 SCRA 778 (1984). These cases differ from *Biogenerics Marketing & Research Corp. vs. NLRC*, G.R. No. 122725, September 9, 1999, because in *Biogenerics* the issue of jurisdiction involves the requirement of cash or surety bond, such that failing to file said bond, NLRC dismissed the appeal.

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The long-established rule is that jurisdiction over a subject matter is conferred by law.[23] Estoppel does not apply to confer jurisdiction to a tribunal that has none over a cause of action.[24] Where it appears that the court or tribunal has no jurisdiction, then the defense may be interposed at any time, even on appeal[25] or even after final judgment.[26] Moreover, the principle of estoppel cannot be invoked to prevent this court from taking up the question of jurisdiction.[27]

To conclude, we find that the NLRC erred in assuming jurisdiction over, and thereafter in failing to dismiss, the private respondent's complaint for illegal dismissal against petitioners, because the NLRC is without jurisdiction on the subject matter of the controversy.

WHEREFORE, the instant petition for *certiorari* and/or prohibition is hereby *GRANTED*. The decision of the National Labor Relations Commission dated March 29, 1996 and the resolution of May 28, 1996 denying petitioners' motion for reconsideration are hereby *REVERSED* and *SET ASIDE* for having been rendered without jurisdiction. This ruling is without prejudice to the private respondent's seeking relief, if so minded, in the proper forum. No pronouncement as to costs.

SO ORDERED.

Bellosillo (Chairman), Mendoza, and *Buena, JJ.*, concur.

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[23] *Ilaw at Buklod ng Manggagawa v. NLRC*, 219 SCRA 536 (1993); *Atlas Developer & Steel Industries, Inc. v. Sarmiento Enterprises, Inc.*, 184 SCRA 153 (1990); *Tijam v. Sibonghanoy*, 23 SCRA 29, 30 (1968).

[24] *Southeast Asian Fisheries Development Center-Aquaculture Department v. NLRC*, 206 SCRA 283 (1992).

[25] *La Naval Drug Corporation v. Court of Appeals*, 236 SCRA 78 (1994).

[26] *Cruzcosa, et al. v. Hon. H. Concepcion, et al.*, 101 Phil. 146 (1957).

[27] *Dy v. NLRC, supra.*