

## **EDMUND GO AND MANUEL KIOK, PETITIONERS, VS. MARIANO SIY, RESPONDENT.**

Ponente: CARANDANG, J.

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### **CARANDANG, J.:**

This is a Petition for Review under Rule 43 of the Rules of Court filed by herein petitioners Edmund Go and Manuel Kiok praying for the reversal of the Decision dated 3 December 2013 issued by the Office of the President (OP) which affirmed the Decision dated 15 July 2009 of the Board of Commissioners of the Housing and Land Use Regulatory Board (HLURB) in HLURB Case No. HOA-A-090312-0224.

The instant petition arose from the Complaint filed by respondent Mariano Siy (respondent) against the Board of Directors of the Grace Village Homeowners Association, Inc. (GVAI) questioning the legality of the election of the Board of Directors of GVAI for the year 2008, as well as the donation of P150,000.00 that it made in favor of Alejandro Go Beltran Foundation.

The facts are as follows:

On 11 January 2008, the Board of Directors of GVAI sent to its members an announcement stating therein that the term of office of the then incumbent members of the Board of Directors was about to expire in January 2008 and requested to submit their “nominations” of Directors not later than 12 January 2008.

On 12 January 2008, respondent sent a letter to the Board of Directors questioning the validity of the procedure of the election contending that the election should be by direct voting and participation of the general membership, either personally or by proxy votes, and that the announcement of the election should indicate the time, date, and procedure.

In a meeting conducted on 16 January 2008, the Board of Directors confirmed their intention to hold elections by nomination and scheduled the counting of the votes on 26 January 2008. In the same meeting, the Board of Directors decided to make a donation to Alejandro Go Beltran Foundation in the amount of P150,000.00.

The election of the Board of Directors was extended to noon of 28 January 2008. On even date, respondent wrote another letter to the Board of Directors questioning the donation to Alejandro Go Beltran Foundation on the ground that association funds are held in trust by them for the cost of the maintenance and management of GVAI and not for any other purpose.

On 31 January 2008, the resident members were informed of the result of the election. On even date, the newly elected Board of Directors conducted a meeting wherein the officers were elected and the Committee heads were chosen.

On 26 February 2008, respondent filed the Complaint a quo praying, among others, that the election for the Board of Directors as well as the donation made to the Alejandro Go Beltran Foundation be declared null and void.

In its Answer filed on 29 April 2008, the Board of Directors of GVAI prayed for the dismissal of the Complaint

on the ground that the respondent failed to attach in his complaint any proof of payment of fees as well as the certification from the chairman of the election committee that no amicable settlement was reached. The Board added that respondent has no standing to file the Complaint because he is not a member of GVAI. It also contended that the time to file the complaint contesting the legality of the election has already prescribed.

As regards the allegation that the donation made to Alejandro Go Beltran Foundation was an ultra vires act for being outside of the purposes of GVAI, the Board of Directors contended that under Section 36, paragraph 9 of the Corporation Code, every corporation has the capacity to make reasonable donations including those for the public welfare or for hospital, charitable, cultural, scientific, civic, or similar purposes.

On 21 January 2009, the National Capital Region Field Office of the HLURB promulgated a decision nullifying the election of the Board of Directors of GVAI for the year 2008. It also declared as null and void the donation made to the Alejandro Go Beltran Foundation for being ultra vires. The dispositive portion of the 21 January 2009 Decision states:

“WHEREFORE, judgment is hereby rendered as follows:

1. Declaring the alleged respondents' elections conducted from January 26 to 28, 2008 as null and void for being contrary to the by-laws of the association and the Corporation Code;
2. Ordering the immediate conduct of elections from receipt hereof under the supervision and guidance of this Office;
3. Declaring the donation of the P150,000.00 by respondents as invalid and directing respondents to return said amount to the association funds; and
4. Directing respondents to pay complainant P50,000.00 as attorney's fees and litigation expenses.

IT IS SO ORDERED.”

This Decision was appealed by the Board of Directors of GVAI to the Board of Commissioners of the HLURB. On 15 July 2009, the Board of Commissioners affirmed the said Decision. The dispositive portion of the 15 July 2009 Decision reads:

“WHEREFORE, we are convinced that the finding of facts and conclusion of law of the Regional Office to be meritorious and therefore, the appealed decision is hereby AFFIRMED IN TOTO, thus denying the appellants' appeal.

SO ORDERED.”

Unperturbed, the Board of Directors of GVAI appealed the case to the Office of the President but the latter denied the same, to wit:

“WHEREFORE, the Decision appealed from is hereby AFFIRMED in toto.

SO ORDERED.”

Hence, the present petition. Herein petitioners assigned the following errors:

I

THE COMPLAINT INSOFAR AS IT QUESTIONS THE ELECTION OF JANUARY 26 TO 28, 2008 AND REQUESTS FOR THE CALLING OF AN ELECTION HAS BECOME MOOT AND ACADEMIC.

II

THE COMPLAINT INSOFAR AS IT QUESTIONS THE DONATION SHOULD BE DISMISSED BECAUSE THE ASSOCIATION AND THE DONEE WHICH ARE INDISPENSABLE PARTIES TO THE DONATION WERE NOT IMPLEADED AS PARTIES.

III

THE OP COMMITTED REVERSIBLE ERROR IN RULING THAT THE DONATION OF MONEY TO A FOUNDATION IS NOT WITHIN THE ENUMERATED POWERS OF GVAI.

IV

THE OP COMMITTED REVERSIBLE ERROR IN RULING THAT INDIVIDUAL RESPONDENTS ARE PERSONALLY LIABLE FOR THEIR OFFICIAL ACTS AS DIRECTORS OF GVAI.[1]

Petitioners argue that the issue of whether the election conducted in January 2008 is null and void has become moot and academic when the GVAI called and held an election of its Board of Directors on 24 February 2013. They likewise argue that complaint should have been dismissed by the HLURB because the respondent failed to implead GVAI as well as the Alejandro Go Beltran Foundation which are indispensable parties to the present case. In addition, they contend that the donation of money to a foundation is within the powers of GVAI as enumerated in its Amended Articles of Incorporation.

Respondent counters that the present petition should be denied outright because the Decision of the OP has already attained finality for failure of the petitioners to file a Motion for Reconsideration to the OP's 3 December 2013 Decision. He also argues that Grounds II, III, and IV in the Petition for Review are deemed waived because petitioners did not plead these grounds in their Answer. Hence, these grounds may not be entertained on appeal.

The petition lacks merit.

It is undisputed that petitioners did not file a Motion for Reconsideration to the OP's 3 December 2013 Decision. Such failure to file the Motion for Reconsideration within the reglementary period is fatal and has rendered the OP Decision final and executory.

Section 4, Rule 43 of the Rules of Court provides that the appeal should be taken within fifteen (15) days from notice of the denial of the motion for reconsideration, if such motion is required by the governing law of the concerned agency:

“Section 4. Period of appeal. — The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, xxx, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the xxx agency a quo. xxx.” (Underscoring Ours.)

Section 14 of the Administrative Order No. 22, Series of 2011 of the Office of the President (Prescribing Rules and Regulations Governing Appeals to the Office of the President of the Philippines) is very clear that a Motion for Reconsideration is mandatory. Thus:

“SECTION 14. Finality of decision. Decisions/resolutions/orders of the Office of the President shall, except as otherwise provided for by special laws, become final after the lapse of fifteen (15) days from receipt of a copy thereof by the parties, unless a motion for reconsideration thereof is filed within such period. Only one motion for reconsideration by any one party shall be allowed and entertained, save in exceptionally meritorious cases.” (Underscoring Ours.)

In *Obiasca vs. Basallote*,<sup>[2]</sup> the Supreme Court ruled that a decision of a quasi-judicial agency becomes final and executory if no Motion for Reconsideration is filed prior to the filing of a Petition for Review under Rule 43 of the Rules of Court, if such Motion for Reconsideration is mandatory under the administrative rules of the

concerned agency. Thus:

In this case, petitioner did not file a petition for reconsideration of the CSC resolution dated November 29, 2005 before filing a petition for review in the CA. Such fatal procedural lapse on petitioner's part allowed the CSC resolution dated November 29, 2005 to become final and executory. Hence, for all intents and purposes, the CSC resolution dated November 29, 2005 has become immutable and can no longer be amended or modified. A final and definitive judgment can no longer be changed, revised, amended or reversed. Thus, in praying for the reversal of the assailed Court of Appeals decision which affirmed the final and executory CSC resolution dated November 29, 2005, petitioner would want the Court to reverse a final and executory judgment and disregard the doctrine of immutability of final judgments.” (Underscoring Ours.)

In *Social Security Commission vs. Court of Appeals*[3], the Supreme Court similarly held:

“xxx A combined reading of Section 5 of Rule VI, quoted earlier, and Section 1 of Rule VII of the SSC’s 1997 Revised Rules of Procedure reveals that the petitioners are correct in asserting that a motion for reconsideration is mandatory in the sense that it is a precondition to the institution of an appeal or a petition for review before the Court of Appeals. Stated differently, while Rago certainly had the option to file a motion for reconsideration before the SSC, it was nevertheless mandatory that he do so if he wanted to subsequently avail of judicial remedies.

This rule is explicit in Rule 43 of the Rules of Court, which states:

xxx xxx xxx

The policy of judicial bodies to give quasi-judicial agencies xxx an opportunity to correct its mistakes by way of motions for reconsideration or other statutory remedies before accepting appeals therefrom finds extensive doctrinal support in the well-entrenched principle of exhaustion of administrative remedies.”

Under Section 14 of Administrative Order No. 22, Series of 2011 of the Office of the President, it is mandatory that a Motion for Reconsideration of the decision or final order of the Office of the President should be filed first before a party can file a Petition for Review with this Court under Rule 43 of the Rules of Court. Thus, for failure of the petitioners to file a Motion for Reconsideration before it filed the instant petition, the assailed OP Decision is already final and executory. It has thus become immutable and can no longer be amended or modified.[4]

There is another ground for the outright dismissal of the instant petition. Petitioners raised for the first time in this appeal that the complaint a quo is dismissible for not including two of the indispensable parties thereto. Also, petitioners invoked for the first time the alleged expanded purposes of the Association as enumerated in its Amended Articles of Incorporation as a justification for the donation that the Board has made to Alejandro Go Beltran Foundation.<sup>5</sup> These issues raised by petitioners for the first time in this appeal can no longer be entertained by this Court. The settled rule is that no question will be entertained on appeal unless it had been raised in the court below.<sup>6</sup> Points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court as they cannot be raised for the first time on appeal. Springing surprises on the opposing party is offensive to the sporting idea of fair play, justice and due process; hence the proscription against raising a new issue for the first time on appeal.[7]

Even if We decide the instant case on the merits, We do not find any factual or legal basis to disturb the ruling of the OP.

Indeed, mere “nominations” of candidates for the Board of Directors of GVAI is legally deficient for the valid election of the Board of Directors of GVAI for the year 2008. Section 24 of the Corporation Code explicitly states that:

“At all elections of directors or trustees, there must be present, either in person or by representative authorized to act by written proxy, xxx a majority of the members entitled to vote. xxx.”

This was not followed in the alleged election of Board of Directors of GVAI for the year 2008. No meeting was held for the said election where a majority of the members entitled to vote was present. Neither was there any written proxy forms sent to the members. What the then incumbent board did was merely to send an unsigned notice to the members requiring them to list their respective nominees for directorship not later than 12 January 2008.[8] Thus:

“GVA would like to announce that the term of office of our present Board of Directors will expire on Jan 2008 & the holding of an election for the 15 man directorship is now open. All regular members &/or lot or real property owners are qualified to run provided they are of good standing & has no pending accounts to settle. Attached is a list of our members. Please write down your nominees for the directorship & submit the nomination list to our office not later than January 12, Saturday.

1. \_\_\_\_\_ 9. \_\_\_\_\_
2. \_\_\_\_\_ 10. \_\_\_\_\_
3. \_\_\_\_\_ 11. \_\_\_\_\_
4. \_\_\_\_\_ 12. \_\_\_\_\_
5. \_\_\_\_\_ 13. \_\_\_\_\_
6. \_\_\_\_\_ 14. \_\_\_\_\_
7. \_\_\_\_\_ 15. \_\_\_\_\_
8. \_\_\_\_\_

Nominated by: \_\_\_\_\_ Date: \_\_\_\_\_”

The said mechanism followed by the Board is a direct contravention of the provisions of Section 24 of the Corporation Code. Hence, the election held from January 26-28, 2008 is null and void.

As regards the donation made by the Board of Directors to the Alejandro Go Beltran Foundation, We likewise agree with the OP that the same is invalid for being ultra vires or outside of the purposes of GVAI. Donation of association funds to outside entities is not one of the primary purposes of GVAI. The primary purposes of the corporation are limited to the following:

- “a. Promote general welfare
- b. Foster understanding and harmony among membership
- c. Promote well being
- d. Cherish ideals of good citizenship
- e. Help every endeavor for a progressive”[9]

For being an ultra vires act, the donation should be nullified and the fund should be returned to GVAI. Petitioners' reliance on GVAI's alleged expanded purposes as stated in the Amended Articles of Incorporation cannot be countenanced because they did not attach any copy thereof in the instant petition. Indeed, the association funds coming from the payment of monthly association dues should be made to answer for the maintenance and daily operation of the association. Diverting a large portion thereof into purposes other than what is stated in the Articles of Incorporation would adversely affect the cash flow of the association to the detriment of its members.

WHEREFORE, premises considered, the instant petition is DENIED for lack of merit.

**SO ORDERED.**

Barza, and Reyes-Carpio, JJ., concur.

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[1] Rollo, p. 12.

[2] G.R. No. 176707. February 17, 2010.

[3] G.R. No. 152058. September 27, 2004.

[4] Supra, Note 2.

[5] “xxx

2. To foster mutual understanding and harmonies relationship among members of the association and with its neighboring communities; xxx

5. To lend, participate, cooperate, help in every endeavour consistent with honor in the promotion of a sound, peaceful, and progressive community;

xxx.”

[6] Gala vs. Ellice Agro-Industrial Corporation, G.R. No. 156819. December 11, 2003.

[7] Santos vs. People, et al., G.R. No. 161877. March 23, 2006.

[8] Rollo, p. 37.

[9] Rollo, p. 32.

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