

CENTRAL COOPERATIVE EXCHANGE, INC., PETITIONER, VS. CONCORDIO TIBE, SR., AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-27972. June 30, 1970

Ponente: REYES, J. B. L., J.

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REYES, J. B. L., J.:

Review, on certiorari, of a decision of the Court of Appeals (in its Case No. 36202 - R), af-firming the decision of the Court of First Instance of Manila (in its Civil Case No. 44536) dismissing after trial a complaint filed by herein petitioner, Central Cooperative Exchange, Inc. (CCE for short), against herein respondent, Concordio Tibe, Sr., for the refund of certain amounts received by the latter from the corporation, while he served as a member of the board of directors of the Exchange.

The petitioner is a national federation of farmers' cooperative marketing associations, or FACOMAS, scattered throughout the country; its single majority stockholder is the former Agricultural Credit and Cooperative Financing Administration (ACCFA), now Agricultural Credit Administration (ACA). As a member of the petitioner's board of directors from 23 May 1958 to 26 May 1960, representing FACOMAS in Eastern Visayas respondent Concordio Tibe, Sr. drew and collected from petitioner CCE cash advances amounting to P5,668.00; of this sum, respondent had, admittedly, already liquidated P3,317.25, leaving the sum of P2,350.75 still to be accounted for. By admission of the petitioner the sum of P2,350.75 has been further reduced to P2,133.45 as of 31 January 1963 on account of partial-payments made after suit was filed (Petitioner's Brief, page 17). Respondent Tibe had also drawn several sums, amounting to P14,436.95, representing commutable per diems for attending meetings of the Board of Directors in Manila, per diems and transportation expenses for FACOMA visitations, representation expenses and commutable discretionary funds. All these sums were disbursed with the approval of the general manager, treasurer and auditor of CCE.

The main issue is whether or not the board of directors of the CCE had the power and authority to adopt various resolutions which appropriated the funds of the corporation for the above-enumerated expenses for the members of the said board.

Section 8 of the By-Laws of petitioner federation provides:

"The compensation, if any, and the per diems for attendance at meetings of the members of the Board of Directors shall be determined by the members at any annual meeting or special meeting of the Exchange called for the purpose,"

In the annual meeting of the stockholders, held in Manila on 31 January 1956, it was resolved that:

"The members of the Board of Directors attending the CCE board meetings be entitled to actual transportation expenses plus the per diems of P30.00 and actual expenses while waiting."

The resolutions of the Board of Directors under which respondent Tibe drew and collected the sums of money

sought to be recovered, and which petitioner claims are invalid resolutions, are the following:

(a) Res. No. 55, May 5, 1957, authorizing:

1. Visitation of FACOMAS, in order to be official, must be with prior sanction or authority of the board, except when it is urgent, in which case Board confirmation is, needed;
2. Per diem of P10.00 is authorized for visitations outside the place of re-sidence of the director concerned;
3. Actual transportation expenses allowed for all visitations sanctioned or authorized by the board.

(b) Res. No. 52, July 8, 1958, appropriating P10,000.00 as discretionary fund of the board of directors, disbursement from which will be made upon authorization of the board chairman and for which no supporting receipts need be presented.

(c) Res. No. 49, July 10, 1958, granting monthly com-mutable allowance of P200.00 to each director starting from July 1, 1958, in lieu of the regular waiting time per diems and transportation expenses while in the City of Manila attending Board and committee meetings.

(d) Res. No. 57, July 24, 1958, amending Res. No. 49 by adding P20.00 to the P200.00 as commutable transportation allowances while attending meetings in Manila.

(e) Res. No. 35, June 11, 1959, increasing the monthly commutable allowance of each director from P300.00 to P500.00 per month effective June 1, 1959.

(f) Res. No. 87, October 9, 1959, appropriating P10,000.00 as commutable discretionary fund of the board of directors .

We agree with the petitioner that the questioned resolutions are contrary to the By-Laws of the federation and, therefore, are not within the power of the board of directors to enact. The By-Laws, in the afore-quoted Section 8 explicitly reserved unto the stockholders' the power to determine the compensation of members of the board of directors, and the stockholders did restrict such compensation to "actual transportation expenses plus the per diems of P30.00 and actual expenses while waiting". Even without the express reservation of said power, the directors are not entitled to compensation, for -

“..... The law is well-settled that directors of corporations presumptively serve with-out compensation and in the absence of an express agreement or a resolution in relation thereto, no claim can be asserted therefor (Sec. 2110, 5 Fletcher 375-376). Thus it has been held that there can be no recovery of compensation, unless expressly provided for, when a director serves as president or vice president, as secretary, as treasurer or cashier, as a member of an executive committee, as chairman of a building committee, or similar offices (Sec. 2112, 5 Fletcher 381-382).” (Alvendia, The Law of Private Corporations in the Philippines, pages 275-276)

Thus, the directors, in assigning themselves additional duties, such as the visitation of FACOMAS, acted within their power, but, by voting for themselves compensation for such additional duties, they acted in excess of their authority, as expressed in the By-Laws.

Nor may the directors rely on Section 28 of the Corporation Law, giving the exercise of corporate powers and the control of the corporation's business and property to the board of directors, or on Section 1 of Article VI of the By-Laws, empowering the board with "general supervision and control of the affairs and property of the Exchange", as justifications for the adoption of the questioned resolutions, because these provisions of the law and the By Laws pertain to the board's general powers merely and do not extend to giving the members of the said board the compensations stated in the resolutions, as the matter of providing for their compensations are

specifically withheld from the board of directors, and reserved to the stockholders.

It is vain for the respondent to rely on the good intentions of the board, that the board for reasons of "expediency and economy", cancelled the per diems and actual transportation and waiting expenses provided by the stockholders and substituted these by monthly commutable allowances of P200.00 (per Resolution No. 49) because the court is not concerned with the propriety or wisdom of the measure of compensation already fixed by stockholders, but which the directors wanted to correct by increase thereof (Government of P. I. vs. El Hogar Filipino, 50 Phil. 399).

As stated earlier, respondent Tibe was a director of the corporation from May, 1958 to May, 1960. During his term, he collected the sums of money appropriated in and pursuant to the board resolutions. Suit was filed against respondent on 22 October 1960. One of the grounds of the appealed decision in finding for the respondent is that the petitioner's claim is barred by laches. We do not agree. The board of directors, under the By Laws of the corporation, had the control of the affairs of the corporation and it is not to be expected that the board would sue its members to recover the sums of money voted by and for themselves. We think that, under the circumstances, where the corporation was virtually immobilized from commencing suit against its directors, laches does not begin to attach against the corporation until the directors cease to be such (Cf. Bates Street Shirt Co. v. Waite, 156 Atl. 293, 297, and cases cited therein). From May, 1960, when respondent ceased to be a director, to October, 1960, when action was filed, is too short a time for the claim to be considered stale.

The Court of Appeals plainly erred in not granting petitioner's claim on the cash advances. In the course of the trial, respondent admitted liability therefor (T.s.n., 4 March 1965, pages 7-8.) Having admitted liability for the cash advances, respondent waived all defenses thereto, including laches, and there was nothing left for the court to have done but to order payment. The appellate court argued that it would not be easy for the respondent to produce the disbursement receipts covering the cash advances. This is certainly no reason for disapproving petitioner's claim; those receipts are no longer necessary, for the liability was admitted.

FOR THE FOREGOING REASONS, the decision under review is hereby reversed, and another one entered ordering the respondent to pay unto the petitioner the sums of P1,730.35 and P14,436.95, with legal interest on both sums from 22 October 1960 until fully paid. Costs against the respondent.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Castro, and Barredo, JJ., concur.

Fernando and Teehankee, JJ., in the result.

Villamor, J., took no part.

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