

**THE BOARD OF DIRECTORS AND ELECTION COMMITTEE OF THE
SMB WORKERS SAVINGS AND LOAN ASSOCIATION, INC., ET AL.
PETITIONERS, VS. HON. BIENVENIDO A. TAN, ETC., ET AL.,
RESPONDENTS.**

G.R. No. L-12282. March 31, 1959

Ponente: PADILLA, J.

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PADILLA, J.:

Petitioners pray for a writ of certiorari with preliminary injunction.

On 17 January 1957 John de Castillo et al., commenced a suit in the Court of First Instance of Manila to declare null and void the election of the members of the board of directors of the SMB Workers Savings and Loan Association, Inc. and of, the members of the Election Committee for the year 1957 held on 11 and 12 January, to compel the board of directors of the association to call for and hold another election in accordance with its constitution and by-laws and the Corporation Law; to restrain the defendants who had been illegally elected as members of the board of directors from exercising the functions of their office; to order the defendants to pay the plaintiffs attorney's fees and costs of the suit; and to grant them other just and equitable relief (civil No. 31584, Annex A). The defendants filed an answer (Annex B), and after joinder of issues the Court set the case for trial. On the day set for trial of the case, neither. the defendants nor their attorney appeared. The Court proceeded to receive the plaintiffs' evidence. On 11 February, the Court rendered judgment declaring the election held on 11 and 12 January null and void, ordering the defendants to call for and hold another election in accordance with the constitution and by-laws of the association and the Corporation Law, and sentencing the defendants to pay the plaintiffs the sum of P1,500 as attorney's fees, and to pay the costs of the suit (Annex C).[1] On 15 February, before the expiration of the time to appeal, the plaintiffs moved for immediate execution of the judgment (Annex F). On 4 March the Court granted the plaintiffs motion and issued the writ of execution prayed for (Annex G). On 9 March the defendants moved for stay of execution of the judgment, for which they offered to file a supersedeas bond in the amount to be fixed by the Court (Annex H). On 23 March the Court denied the defendants' motion. In compliance with the judgment rendered by the Court, on 26 March the election committee composed of Quintin Tesalona, Manuel Dumaup and Jose" Capinio Santos set the meeting of the members of the association for 28 March at 5:30 o'clock in the afternoon to elect the new members of the board of directors (Annexes J & 4). On 27 March the plaintiffs filed an ex-parte motion alleging that the election committee that had called the meeting of members of the association is composed of the same members that had conducted and supervised the election of the members of the board of directors that was declared null and void by the Court; that in view thereof it would be inequitable to allow them to conduct and supervise again the forthcoming election; that the election to be conducted and supervised by the said committee would not be held in accordance with the constitution and by-laws of the association providing for five days notice to the members before the election, since the notice was posted and sent out only on 26 March, and the election would be held on 28 March, or two days after notice; that the notice that beginning 26 March any member could secure his ballot and proxy from the office of the

association is in violation of section 5, article III of the constitution and by-laws, which prohibits voting by proxy in the election of members of the board of directors,[2] and that the defendants did not show that arrangement is being made "to guarantee that the election will be held in accordance with the constitution and by-laws and by the law." They prayed that the Court appoint its representative or representatives, whose compensation shall be paid out of the funds of the association, to supervise and conduct the election ordered by it (Annex 4). On the same day, 27 March, the Court entered an order providing as follows:

* * * the Court hereby orders that the election scheduled for March 28, 1957 be, as it hereby is, cancelled, and a committee of three is hereby constituted and appointed to call, conduct and supervise the election of the members of the board of directors of the association for 1957, said committee to be composed of Mr. Candido C. Viernes as representative of the Court and to act as Chairman; and one representative each from the plaintiffs and defendants, as members. The committee is vested with the sole and exclusive power and authority to call conduct and supervise the election of the members of the board of directors of the association for the year 1957.

The chairman of the committee shall receive a compensation of P50.00 per day and the members thereof P30.00 each per day, said compensation to be paid by the association. so ordered. (Annexes E & 3.)

On 28 March the defendants moved for reconsideration of the foregoing order (Annex L). On 30 March the Court denied the motion for reconsideration.

Claiming that in issuing the order of 27 March 1957 (Annexes E & 3) and in denying their motion for reconsideration, the Court acted without or in excess of jurisdiction or with grave abuse of discretion; and that there being no appeal or any plain, speedy and adequate remedy in the ordinary course of law, the petitioners pray for a writ of certiorari to annul and set aside the order assailed, and a writ of preliminary injunction to restrain the respondent court from enforcing its order of 27 March 1957 (Annexes E & 3) after the filing of a bond in the amount to be fixed by this Court; for costs to be taxed against the respondents, and for such other just and equitable relief as may be granted to them. On 14 May 1957, after the petitioners had filed a bond in the sum of P200, this Court issued the writ of preliminary injunction prayed for.

Section 3, article III, of the constitution and by-laws of the association provides:

Notice of the time and place of holding of any annual meeting, or any special meeting, of the members, shall be given either by posting the same in a postage prepaid envelope, addressed to each member on record at the address left by such member with the Secretary of the Association, or at his known post-office address, or by delivering the same in person, at least five (5) days before the date set for such meeting. * * * In lieu of addressing or serving personal notices to the members, notice of a regular annual meeting or of a special meeting of the members may be given by posting copies of said notice at the different departments and plants of the San Miguel Brewery Inc., not less than five (5) days prior to the date of the meeting. (Annex K.)

Notice of a special meeting of members should be given at least five days before the date of the meeting. It appears that the notice was posted on 26 March and the election was set for 28 March. Therefore, the live days previous notice required would not be complied with.

As regards the creation of a committee of three vested with the authority to call, conduct and supervise the election, and the appointment thereto of Candido C. Viernes as chairman and representative of the court and one representative each from the parties, the Court in the exercise of its equity jurisdiction may appoint such committee, it having been shown that the Election Committee provided for in section 7 of the by-laws of the association that conducted the election annulled by the respondent court if allowed to act as such may jeopardize the rights of the respondents.

In a proper proceeding a court of equity may direct the holding of a stockholders' meeting under the control of a special master, and the action taken at such a meeting will not be set aside because of a wrongful use of the court's interlocutory decree, where not brought to the attention of the court prior to the meeting. (18 C.J.S. 1270.)

A court of equity may, "on showing of good reason, appoint a master to conduct and supervise an election of directors when it appears that a fair election cannot otherwise be had. Such a court cannot make directions contrary to statute and public policy with respect to the conduct of such election. (19 C.J.S. 41)

The writ prayed for is denied and the writ of preliminary injunction heretofore issued dissolved, with costs against the petitioners.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

[1] On 19 February 1957 the defendants filed a petition for relief from judgment on the ground of excusable neglect (Annex D). On 23 February the Court denied their petition. The defendants appealed to the Supreme Court but their appeal was dismissed on 21 June 1957 for failure to pay the docket fee and to deposit the estimated cost of printing the record on appeal (Annex 2).

[2] This statement by the plaintiffs, respondents herein, is not correct because voting by proxy is allowed by section 5, Article III, of the by-laws of the association.

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