ONE LAFAYETTE SQUARE CONDOMINIUM ASSOCIATION, INC., PETITIONER, VS. THE HON. HOUSING AND LAND USE ARBITER (HOUSING AND LAND USE REGULATORY BOARD), AND SPOUSES MOISES AGANON AND ...

Ponente: CRUZ, R.A. J.

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CRUZ, R.A. J.:

THE CASE

This is a Petition for Certiorari and Prohibition under Rule 65 of the 1997 Rules on Civil Procedure seeking the review and reversal of the Order dated November 17, 2011 issued by the Housing and Land Use Regulatory Board Expanded National Capital Region Field Office (HLURB-ENCRFO) in HLURB Case No. NCRHOA-092211-1560 entitled “Spouses Moises and Angelica Aganon v. One Lafayette Square Condominium Association, Inc.” the dispositive portion of which reads as follows:

x x x

> “WHEREFORE, premises considered, a Cease and Desist Order (CDO) is hereby issued enjoining the respondents or their assigns from disconnecting the water services of complainants' unit. Corollary, respondents are ordered to reconnect the water services of complainants. Complainants are hereby ordered to post a bond in the amount of P10,000.00 to answer for whatever damages that respondent may sustain by the reason of the order, if it should be later decided that the complainants are not entitled thereto.
>
> “SO ORDERED.”

x x x

THE ANTECEDENTS

Petitioner One Lafayette Square Condominium Association, Inc. (OLSCAI) is a non-stock, non-profit corporation formed pursuant to the provisions of Republic Act No. 4726, otherwise known as the Condominium Act, for the purpose of holding title to the common areas of One Lafayette Square Condominium Project and managing the same. Private Respondents Spouses Moises Aganon and Angelica Aganon are occupants of Unit 26-A of the the condominium project with an area of approximately 170 square meters and covered by Condominium Certificate of Title No. 87829 of the Registry of Deeds for the City of Makati registered in the names of Spouses Angelica N. Borromeo (now Angelica Aganon) and Wilfredo S. Borromeo. Angelica Aganon is a member and stockholder of the Petitioner OLSCAI in accordance with Section 8, paragraph (b) of the Amended Master Deed with Declaration of Restrictions of One Lafayette Square (Condominium Project).[1]

All members of the Condominum Project, including the private respondents, are assessed monthly association dues in the amount of Php70.00 per square meter. The subject unit having an area of 170 square meters, private respondents are liable to pay association dues in the amount of Php 11,900.00 per month.

Private respondents claim that there was a substantial damage to their unit caused by the water leakage from the water drain lines during rains and the leak had crept into their unit which damaged their cabinet, kitchen, floors, walls, furniture and others. According to the private respondents, upon instruction of the previous President of OLSCAI, they hired a contractor to repair the damages to the retaining walls and floors with the understanding that their expenses would be offset against association dues. The repairs were done but the previous President was already gone. The new management of OLSCAI did not want to honor the commitment, insisting that the previous President acted and made decisions without an authority from the Board.

Meanwhile, a new round of leakages occurred and a third round of damages also took place. This time, the leakage seeped through and flooded the floors of private respondents' unit. The new building manager, Mr. Raoul Roldan, inspected the damages after he was apprised of the same. However, according to Mr. Roldan, the Board of OLSCAI did not want to do anything to their unit because the spouses were delinquent in their association dues. Private respondents met with the new OLSCAI President Mr. Antonio Olizon who informed them that they cannot honor the offsetting arrangement between them and the previous President Ms. Cielo Custodio reasoning that the latter was not authorized to do so. The spouses argued that Ms. Custodio was authorized because the matters were part of the ordinary repairs and these were deemed included in the ordinary rules of administration.

The private respondents proposed to the association for them to pay the current dues with the past dues to be held in abeyance, to be compensated against the losses caused by the water leaks, and that no interest or penalties should be charged against their past association due obligations. The proposal was rejected.

Private respondents have not paid their monthly association dues for three (3) consecutive years. Accordingly, on August 5, 2010, Petitioner OLSCAI caused the annotation of a Notice of Assessment and Lien on Title on the title of the subject unit with the Register of Deeds for Makati City.

Instead of paying their overdue and outstanding obligations to the Petitioner OLSCAI, private respondents sent a letter, through counsel, proposing that Petitioner OLSCAI (a) fix the alleged damages on the subject unit allegedly caused by leaks emanating from the common wall of the condominium project; and (b) waive all interests, charges and penalties charged against the admittedly overdue account.

Petitioner OLSCAI sent a reply through a letter dated February 11, 2011 informing the private respondents that their proposal has been rejected and reiterating its demand for the private respondents to pay their overdue and outstanding obligations to Petitioner OLSCAI. Otherwise, it will be constrained to cut-off and disconnect the utilities to the subject unit.

Amidst the controversy between private respondents and OLSCAI, the latter cut off the water connection of the private respondents despite the fact that they have no outstanding obligations for the water they consumed, in order to compel the spouses to pay the overdue association dues.

The overdue and outstanding obligation of private respondents to Petitioner OLSCAI is Php 904,996.00 as of April 10, 2011, exclusive of legal interest from date of last demand.

Petitioner OLSCAI filed a case against private respondents for Collection of Sum of Money with the Regional Trial Court, Branch 66 of Makati City docketed as SEC Case No. 11-340.

In turn, private respondents filed a criminal case against the officers of Petitioner OLSCAI for grave coercion with the Office of the City Prosecutor of Makati City but was dismissed by Assistant Prosecutor Rainald Paggao for lack of probable cause. Private respondents have a pending motion for reconsideration from the said dismissal.

On September 22, 2011, private respondents filed with the HLURB a Complaint (with application for Cease and

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Desist Order)[2] against OLSCAI docketed as HLURB Case No. NCRHOA-092211-1560. The complaint sought to enjoin OLSCAI to reconnect the water line to the subject unit and to refund to Complainants Spouses Aganon the monies they paid for the expenses of the initial repairs of the damages in their unit caused by the building's faulty external water proofing system as initially determined by the building administration in their own investigation at that time; to withdraw the foreclosure that the association had caused on the unit owned by the complainants; to pay for all the succeeding physical damages in the subject unit caused by the faulty building storm drains as determined by the building administration's Engineer, and to pay for all damages and attorney's fees and the cost of suit. The Complaint also sought the issuance of a cease and desist order against OLSCAI for the latter to reconnect the water line of complainants while the complaint is pending.

On October 17, 2011, petitioner filed its Answer Ex Abundante Ad Cautelam praying for the summary dismissal of the complaint with application for cease and desist order for lack of jurisdiction and utter lack of merit.

Private respondents filed their position paper on the application for cease and desist order dated October 17, 2011. Petitioner OLSCAI filed its Reply thereto reiterating its prayer for the dismissal of the complaint. After private respondents filed their Reply to the Reply and petitioner in turn filed its Sur-Rejoinder, the HLURB issued the assailed Cease and Desist Order enjoining OLSCAI from disconnecting the water services of the Spouses Aganon's condominium unit.

Hence, this petition.

THE ISSUES BEFORE US

Petitioner poses the following issues, to wit:

I

WHETHER OR NOT THE PUBLIC RESPONDENT HAS ABSOLUTELY NO JURISDICTION TO HEAR THE CASE AS IT INVOLVES AN INTRA-CORPORATE DISPUTE.

II

WHETHER OR NOT THE PUBLIC RESPONDENT HAS ABSOLUTELY NO JURISDICTION OVER THE SUBJECT MATTER OF THE CONTROVERSY AS IT IS AN INTRA-CORPORATE DISPUTE AND THEREFORE THE CEASE AND DESIST ORDER WAS ISSUE WITH PATENT ILLEGALITY AND THEREFORE VOID.

III

WHETHER OR NOT THE PUBLIC RESPONDENT ACTED WITH PATENT ILLEGALITY BY NOT SUMMARILY DISMISSING THE CASE WHEN IT IS CLEAR THAT THE PRIVATE RESPONDENT IS GUILTY OF WILLFUL AND DELIBERATE FORUM SHOPPING.

IV

WHETHER OR NOT THE RESPONDENT ARBITER SHOULD BE RESTRAINED FROM HEARING THE CASE TO PRESERVE THE RIGHTS OF THE PARTIES PENDING THE RESOLUTION OF THIS PETITION.

Private Respondents filed their Comment[3] dated February 17, 2012 alleging that the present petition for certiorari is not proper and should be dismissed for failure of petitioner to exhaust administrative remedies.

OUR RULING

Propriety of the Petition for
Certiorari

Private respondents maintain that by the principle of exhaustion of administrative remedies, the petitioner should have first appealed the cease and desist order to the HLURB before proceeding to this Court.[4] In their Rejoinder,[5] private respondents further assert that a petition for certiorari may not be resorted to by petitioner because there is another remedy available, which is an appeal from interlocutory orders to be filed with the HLURB, citing Section 66 of Rule 19 of the HLURB Rules of Procedure. The said section provides, that:

x x x

"Rule 19
GENERAL PROVISIONS

> Section 66.Coverage. - This Rules shall be application to the following provisional and special remedies, which include:
>
> (a) Creation of Management Committee;
> (b) Cease and Desist Order;
> (c) Contempt;
> (d) Inspection of Books and Records; and,
> (e) Other applicable provision and special remedies in the Rules of Court.
>
> Provisional remedies are remedies incident to the main cased and may be availed of by way of a motion. Special remedies are initiated as the main case and may be availed of by way of a verified petition or verified complaint in accordance with Section 15 of this Rules."

x x x

Private respondents argue that, based on the foregoing provision, petitioner could have availed of a provisional remedy incident to the main case by means of filing a separate verified petition or verified complaint in accordance with Section 15 of the HLURB Rules. Alas, private respondents failed to specify what these provisional remedies that petitioner could have availed of, because We find none to be applicable in this case. Private respondents' rhetoric failed to explain how there was non-exhaustion of administrative remedies on the part of petitioner, or that petitioner had other remedies aside from an action for certiorari.

As correctly pointed out by petitioner, a motion for reconsideration and an appeal from a cease and desist order are both prohibited pleadings under Section 14, Rule 4 of the 2011 Revised Rules of Procedure of the HLURB, viz.:

x x x

> "Section 14. Prohibited Pleadings and Motions. – The following shall be considered as prohibited pleadings and motions which shall not be entertained:
>
> x x x x x x
>
> (d) Motions for reconsideration in whatever stage of the proceedings;
>
> (e) Appeal from any interlocutory order, including but not limited to, cease and desist orders;
>
> x x x x x x"

x x x

A Petition for Certiorari under Rule 65 of the Rules of Court may be filed when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.[6] As gleaned from the HLURB Rules, an appeal from the assailed Order is not an available remedy for the petitioner. Hence, the filing of the present petition is proper.

Jurisdiction Over the Subject Matter

Petitioner asserts that the public respondent does not have jurisdiction over the subject matter of the case, it being a condominium corporation duly organized and incorporated pursuant to Republic Act No. 4726, otherwise known as the Condominium Corporation and registered with the Securities and Exchange Commission (SEC). Private respondents are members and stockholders of the Condominium Corporation in connection with the enforcement and application of Petitioner OSCLAI's internal rules that was adopted in accordance with the Amended Master Deed with Declaration of Restrictions of One Lafayette Square (Condominium Project). The Complaint with Application for Cease and Desist Order therefore involves an intra-corporate dispute over which jurisdiction is lodged with the Regional Trial Court sitting as a Special Commercial Court.

Petitioner also maintains that the allegations in the Complaint with Application for Cease and Desist Order do not establish a cause of action cognizable by the HLURB. Since the HLURB has no jurisdiction over the subject matter of the case, the cease and desist order was issued with patent illegality, hence void.

For the part of private respondents, they maintain that Public Respondent HLURB has jurisdiction to issue the cease and desist order, quoting the assailed Order, viz.:

x x x

> “The issue at bar concerns the application of the Master Deed of the project by the respondent (OLSCAI) and its internal rules, which is its authority to disconnect water services of unit owners for their failure to pay condominium/association dues. The instant case is not purely an intra-corporate dispute since it involves first and foremost the validity of the aforesaid provision in the master deed as to the disconnection of water services for failure to pay condominium dues.
>
> “Secondly, the non-payment of the association dues sprung from the water leakage on complainant's unit which is an issue on the development aspect of the project, which the HLURB definitely has jurisdiction as the regulatory body to determine compliance with rules and standards of development. The condominium corporation/association only stepped in the shoes of the developer upon the turnover of the project. The Master Deed is the embodiment of complainants' rights as unit buyers. Hence, an initial finding of the issue of jurisdiction in the instant case favors the complainants.”

x x x

Public Respondent Arbiter reasoned that the case involves damage to private respondents' unit, which in turn involves the development aspect of the project over which the HLURB has jurisdiction.

Basic as a hornbook principle is that jurisdiction over the subject matter of the case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action.[7] The averments in the complaint and the character of the relief sought are the ones to be consulted.[8]

To determine whether a dispute constitutes an intra-corporate controversy, there are two tests that may be utilized,

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namely, the relationship test and the nature of the controversy test.[9]

An intra-corporate controversy is one which pertains to any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the State insofar as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves.[10] Thus, under the relationship test, the existence of any of the above intra-corporate relations makes the case intra-corporate.[11]

Under the nature of the controversy test, the controversy must not only be rooted in the existence of an intra-corporate relationship, but must well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation.[12] In other words, jurisdiction should be determined by considering both the relationship of the parties as well as the nature of the question involved.

Applying the relationship test, the relationship between the parties fall under the third kind, which is between the corporation and its stockholders. As to the nature of the controversy test, we resort to what was alleged in the complaint. Private respondents' cause of action was to enjoin petitioner to reconnect the water line to their unit, to refund to them the expenses of initial repairs for the damages to their unit, to withdraw the foreclosure that the association had caused on the unit, to pay for all the succeeding physical damages to the unit, and to pay for all damages and attorney's fees and the cost of the suit.

Private respondents are not seeking for the approval or disapproval of the Master Deed. The issue at hand is the authority of petitioner to cut off private respondents' water connection in view of the latter's unpaid association dues. Hence, it involves the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation.

Employing both tests, We arrive at the conclusion that the case involves intra-corporate controversy. The question next to be determined is which court or tribunal has jurisdiction over such cases.

Initially, the Securities and Exchange Commission (SEC) exercised exclusive jurisdiction over the following:

x x x

> “b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members and associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members, or associates, respectively; and between such corporation, partnership or association and the State insofar as it concerns their individual franchise or right to exist as such entity; x x x”[13]

x x x

By virtue of Section 5.2 of Republic Act No. 8799, otherwise known as the Securities Regulation Code, the jurisdiction of the SEC over all cases enumerated under Section 5 of Presidential Decree No. 902-A, which includes intra-corporate controversies, has been transferred to RTCs designated as Special Commercial Courts.[14]

Private respondents invoke the provisions of the Magna Carta for Homeowners and Homeowners' Association, otherwise known as Republic Act No. (R.A.) 9904 which became a law on January 7, 2010 which conferred upon the HLURB jurisdiction over the intra-association disputes to be applied in this case.

The case of Medical Plaza Makati Condominium Corporation v. Robert H. Cullen[15] has settled once and for all

whether R.A. No. 9904 is applicable to intra-corporate controversies between a condominium corporation and a condominium unit owner, viz.:

x x x

> "Indeed, Republic Act (RA) No. 9904, or the Magna Carta for Homeowners and Homeowners' Associations, approved on January 7, 2010 and became effective on July 10, 2010, empowers the HLURB to hear and decide inter-association and/or intra-association controversies or conflicts concerning homeowners' associations. However, we cannot apply the same in the present case as it involves a controversy between a condominium unit owner and a condominium corporation. While the term association is defined in the law covers homeowners' associations of other residential real property which is broad enough to cover a condominium corporation, it does not seem to be the legislative intent. A thorough review of the deliberations of the bicameral conference committee would show that the lawmakers did not intend to extend the coverage of the law to such kind of association. x x x
>
> x x x x x x
>
> "To be sure, RA 4726 or the Condominium Act was enacted to specifically govern a condominium. Said law sanctions the creation of the condominium corporation which is especially formed for the purpose of holding title to the common area, in which the holders of separate interests shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units. The rights and obligations of the condominium unit owners and the condominium corporation are set forth in the above Act.
>
> "Clearly, condominium corporations are not covered by the amendment. Thus, the intra-corporate dispute between petitioner and respondent is still within the jurisdiction of the RTC sitting as a special commercial court and not the HLURB. x x x"

x x x

Since HLURB has no jurisdiction over the present case, it follows that it has no jurisdiction to issue the cease and desist order now being assailed by the petitioner.

WHEREFORE, premises considered, the petition is GRANTED. The Complaint filed by Private Respondents Spouses Moises Aganon and Angelica N. Aganon with the HLURB-ENCRFO in HLURB Case No. NCRHOA-092211-1560 is hereby DISMISSED for lack of jurisdiction. The Cease and Desist Order dated November 17, 2011 issued by the HLURB-ENCRFO is corollarily DISSOLVED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Abdulwahid, H.S., Chairperson and Barza, R.F., JJ., concur.

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[1] Section 8 (b). All Unit owners or those who have no more pecuniary obligation to the DECLARANTS shall automatically become members of the Condominium Corporation, to the exclusion of others. The interest of each member in the Condominium Corporation shall be equal to its appurtenant Unit Share as set forth in Annex "C" hereof. Such interest cannot be assigned, hypothecated or transferred in any manner by a member except as an

appurtenance to his Unit.

[2] Rollo, pp. 111-127.

[3] Id., pp. 305-308.

[4] Comment, p. 2, at Rollo, p. 306.

[5] Rollo, pp. 319-328.

[6] Section 1, Rule 65 of the Rules of Court.

[7] Go v. Distinction Properties Development and Construction, Inc., G.R. No. 194024, April 25, 2012.

[8] Ibid.

[9] Medical Plaza Makati Condominium Corp. v. Robert H. Cullen, G.R. No. 181416, November 11, 2013, citing Reyes v. RTC of Makati, Br. 142, G.R. No. 165744, August 11, 2008.

[10] Id., citing Go v. Distinction Properties Development and Construction, Inc. supra.; Strategic Alliance Development Corporation v. Star Infrastructure Development Corporation, G.R. No. 187872, November 17, 2010.

[11] Id., citing Reyes v. RTC of Makati, Br. 142, G.R. No. 165744, August 11, 2008.

[12] Medical Plaza Makati Condominium Corp. v. Cullen, supra. citing Strategic Alliance Development Corporation v. Star Infrastructure Development Corporation, G.R. No. 187872, November 17, 2010.

[13] Section 5, Presidential Decree No. 902-A.

[14] See note 12.

[15] Supra.

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