

LUCIEN BALTEZA, DOING BUSINESS UNDER THE NAME AND STYLE OF RNMD ANIMAL BITE CENTER, PETITIONER, VS. REGIONAL TRIAL COURT, BRANCH 143, MAKATI CITY, BOTICA NG MUNISIPYO, INC. AND ...

SP No. 111198, August 26, 2010

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Court of Appeals

Before this Court is a Petition for Certiorari[1] with prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction under Rule 65 of the 1997 Revised Rules of Civil Procedure assailing the Orders dated March 23, 2009[2] and August 20, 2009[3] of the Regional Trial Court, National Capital Judicial Region, Branch 143, Makati City in Civil Case No. 07-1010 entitled "Botika ng Munisipyo, Inc. and Family Vaccine Specialty Clinics, Inc., Plaintiffs, versus Lucien Balteza, doing business under the name and style of RNMD Animal Bite Center, Defendant.", the dispositive portions of which read:

Order dated March 23, 2009-

"Wherefore, premises considered, the Court resolves to partially grant the instant Omnibus Motion by ordering the following:

1 All the bite centers under the control of the parties including those enumerated by the plaintiff (sic) in its Complaint, and all the funds pertaining thereto, or existing prior to and those that may accrue after the issuance of this Order, are declared to be in custodia legis and placed within the jurisdiction of this Court;

2. A Board of Commissioners composed of three (3) members, one (1) to be chosen by the plaintiff (sic), one (1) to be chosen by the defendant, and the third (3) member who shall be chosen by the court, shall be empowered and tasked to perform the following acts immediately from the date of issuance of this Order until judgment is rendered:

a)

Identify the bite centers operated and controlled by the parties that are to be placed in custodia legis;

b)

Issue the necessary subpoenas duces tecum and ad testificandum to persons in charge with and who have knowledge or possession of information relating to the operations of the bite centers;

c)

Require the conduct of periodic accounting of the funds of the bite centers for at least twice a month and submit a report thereon within a period to be determined by the Board of Commissioners, and cause the delivery of the funds to the actual custody of the Court when circumstances warrant;

d)

Administer the bite centers, and issue orders on specific matters pertaining to any and all aspects of the operation of the bite centers, including but not limited to, the purchase of supplies and vaccines from plaintiffs, the submission of operational and financial reports and such other matters necessary or proper to carry this Order into effect; and

e)

Whenever required by this Court, to file a report in writing upon the matters delegated to it, attaching thereto all pertinent papers and documents incidental to the exercise of the powers herein conferred.

Consistent with the above orders, the parties and their counsels are ordered to submit to the Court the names and qualifications of their respective nominees within five (5) days from receipt of this Order. Failure of any party to appear shall constitute a waiver of the right to appoint a member, and the Court shall forthwith name a member of the Board of Commissioners on the said party's behalf. Thereafter, the Board of Commissioners as constituted, shall within ten (10) days, schedule their (sic) first meeting. The members of the Board of Commissioners shall be allowed a reasonable compensation to be fixed by the Court, and which compensation shall be equally shouldered by the parties.

SO ORDERED."

Order dated August 20, 2009 -

"WHEREFORE, the Motion for Reconsideration is denied for lack of merit. The Motion to Admit Amended Complaint is granted. Accordingly, the Amended Complaint is hereby ADMITTED.

SO ORDERED."

The facts are:

On October 31, 2007, private respondents Botica ng Munisipyo, inc. ("BNIW" for brevity) and Family Vaccine and Specialty Clinics, Inc. ("FVSC" for brevity) filed a Complaint^[4] for Collection, Accounting and Damages with Prayer for the Issuance of a Writ of Preliminary Attachment against petitioner Lucien Balteza ("Balteza" for brevity), doing business under the name and style of RNMD Animal Bite Center ("RNMD" for brevity) before the RTC, Makati City averring that: sometime in 2005, petitioner Balteza met with their officers and proposed the establishment, operation and management of animal bite clinics or bite centers all over the Philippines; to launch the said business, petitioner Balteza induced them to invest funds and supplies which the former would handle with utmost prudence and good faith; they were initially very cautious but petitioner Balteza was able to persuade them, through smooth talk and the appearance of naivety and trustworthiness, to agree to his proposals; on November 18, 2005, private respondent BNM and petitioner Balteza entered into a Memorandum of Agreement^[5] (MOA) for the purpose of establishing, operating and managing bite centers in provincial, municipal and district hospitals and for the exclusive supply and sale of anti-rabies vaccines to the said bite centers; under the MOA, private respondent BNM and petitioner Balteza agreed, among others, that: the former shall advance the pre-operating facilities and the vaccines to be used by the bite centers and make the necessary representations with the local government units and/or offices for the establishment of the said bite centers in hospitals and/or health offices within their respective jurisdictions; petitioner Balteza shall manage and operate the bite centers, submit reports as regards the operations and take full responsibility over the personnel; and private respondent BNM shall be the exclusive supplier of all vaccines to be used by petitioner Balteza in the said bite centers; private respondent BNM and its allied and affiliate company, private respondent FVSC, faithfully

complied with their obligations under the MOA and turned over to petitioner Balteza the management, administration and operation of the bite centers; through their efforts, funding and supplies, bite centers were established and maintained in Aklan, Bacoor, Cavite, Baguio, Bailan, Capiz, Balasan, Iloilo, Baliuag, Banasi, Camarines Sur, Barotac, Viejo, Batangas, Cabanatuan, Nueva Ecija, Caloocan, Camarin, Caloocan, Dasmarias, Bagong Bayan, Gapan, Nueva Ecija, General Mariano Alvarez, Gumaca, Quezon, Guimba, Iloilo, Hagonoy, Bulacan, Ibay, Aklan, Iloilo Provincial Capitol, Janiway, Iloilo, Laguna Provincial Hospital, Lubao, Pampanga, Makati City, Mambusao, Capiz, Sta. Cruz, Manila, Morong, Rizal, Nasugbu, Batangas, Navotas, Ocampo, Camarines Sur, Partido, Camarines Sur, Passi, Pateros, Pototan, Iloilo, Quezon City, Roxas, Capiz, Salamanca, Cavite, San Juan, San Mateo, Rizal, Sara, Iloilo, Sipocot, Camarines Sur, Sta. Cruz, Laguna, Trece Martires, Cavite and Unisan, Quezon; with petitioner Balteza's knowledge and consent, they extended P5,016,842.00 as operating advances, which was more than what was required of them under the MOA; petitioner Balteza did not contribute to the initial inventory cost as required under the MOA; petitioner Balteza failed and refused to submit the required monthly report/summary and to render an accounting of the proceeds derived from the operations of the bite centers; petitioners Balteza failed and refused to promptly pay the vaccines and other medical items delivered and supplied by them; petitioner Balteza used some other vaccines produced and marketed by their competitors; they incurred losses amounting to P7,163,526.00; petitioners Balteza withdrew the supplies and items provided by them for the bite centers without their consent and for no legitimate purpose but his personal gain; petitioner Balteza directed nurses to forge the signatures of doctors with respect to medicines and vaccines taken and applied to patients; petitioner Balteza refused and failed to comply with the applicable laws on tax, employment, social security, health insurance, home mortgage and financing; reports reached them that petitioner Balteza sexually harassed the bite center employees; petitioner Balteza consistently failed and refused to heed their repeated request to submit his accounting/ report/summary of operations and to rectify the wrong done; on May 8, 2007[6], private respondent BNM notified petitioner Balteza in writing of the cancellation of the MOA and it also sought for an accounting of the proceeds and receivables of the bite centers, inventory of the supplies and stocks, return of the misappropriated amount, items or stocks and the settlement of the latter's accountability within five (5) days from receipt; petitioner Balteza ignored the written demand[7] dated June 22, 2007 of private respondent BNM to coordinate with the latter in exploring the most appropriate mode of resolving the dispute; and, petitioner Balteza should pay them P50,000.00 as exemplary damages, P30,000.00 as nominal and temperate damages and P500,000.00 attorney's fees.

On January 9, 2008, the lower court approved the bond[8] posted by private respondents BNM and FVSC.

On January 14, 2008, a Writ of Attachment[9] was issued by the lower court commanding its Sheriff to attach petitioner Balteza's real and personal properties as may be sufficient to satisfy the claim of private respondents BNM and FVSC against the former amounting to P5,016,842.00 and costs of suit pursuant to its December 17, 2007 order granting the said writ.

On the other hand, on March 5, 2008, petitioner Balteza filed his Answer[10] averring, that: he operates his business under the name and style of RNMD Multi Specialty Clinics; the officers, agents and representatives of private respondents BNM and FVSC were the ones who sought and insistently requested for a conference with him, inquired about his thriving business and offered to make representations for him with various local government units to put up additional bite centers in the hospitals and health offices within the jurisdictions of the said local government units in the name of RNMD and to provide the necessary funds and supplies to establish said bite centers in exchange for a share in the profits of his business; private respondents BNM and FVSC assured him that they would not interfere with his business operations but would merely act as passive minority investors entitled to share in the profits of the business; the parties expressly agreed that the bite centers to be established and operated by him would be in addition to that which he had already established and operated; the

supposed exclusive supply and sale of anti-rabies vaccines to the bite centers pertained only to those being carried and sold by private respondent BNM; private respondent BNM knows that he was using other anti-rabies vaccines procured from other suppliers that the former did not have in its inventory; it was clearly understood that he would continue to procure vaccines from other suppliers unless private respondent BNM would likewise supply the same at prices less than or equal to that offered by his other suppliers; the facilitation of the pre-operating activities and requirements of the new bite centers was the principal obligation of private respondent BNM to the partnership, the cost of which was to be treated as its equity contribution to his business for which it was entitled to a thirty percent (30%) share in his profits; there is no mention in the agreement that the cost of the said pre-operating activities and requirements of the new bite centers would be treated as operating advances of private respondent BNM; private respondent BNM did not seek his consent in spending P5,016,842.00 for the purported pre-operating activities; his obligation to submit a monthly report/summary of the operations of the bite centers was dispensed with when private respondent BNM engaged the services of an information technology (IT) company, 8 Layer Technologies, Inc., to devise a real time short messaging system (SMS) or text based reporting system so that the bite centers would be able to make a daily report of their operations after realizing that it was virtually impossible for him to comply owing to the many activities at the bite centers; private respondent BNM did not deliver a single vaccine to any of the new bite centers; he solely paid for the initial inventory and subsequent supplies of vaccines and other supplies for the new bite centers; private respondent BNM provided inadequate physical facilities for the new bite centers; the failure of private respondent BNM to provide weighing scales, injection tables and other basic equipment for the bite centers constrained him to provide them on his own account; the parties agreed that he would be the signatory, in his capacity as owner of RNMD, to the memorandum of understanding (MOU) with the local government units; private respondents BNM and FVSC maliciously intended to surreptitiously undermine and take over his business by making private respondent FVSC a signatory to the subsequently MOUs[11] executed with the local government units; he solely put up and established the bite centers in Trece Martires, Cavite, Cabanatuan City, Nueva Ecija, Gapan, Nueva Ecija, Hagonoy, Bulacan, General Mariano Alvarez, Makati City, Bacoar, Cavite, Cavite City, Quezon City, Sta. Cruz, Laguna and Batangas City even before he met with the officers, agents and representatives of private respondents BNM and FVSC; RNMD is the owner of the thirty three (33) new bite centers and he was supposed to manage and operate them; private respondents BNM and FVSC forcibly, maliciously and shamelessly wrested control of twenty one (21) new bite centers and took over its operation and management to his damage and prejudice; private respondents BNM and FVSC violated the MOA by putting up their own training center for nurses specializing in the treatment of animal bites, recruited nurses for employment with private respondent FVSC and pirated or tried to pirate the nurses of RNMD; private respondents BNM and FVSC put up their own Lanuza Animal Bite Center in Sta. Cruz, Manila; he was able to render a complete and accurate accounting of the operation of all the bite centers including the new ones; he allowed private respondents BNM and FVSC to examine the logbooks of the bite centers which contain the complete record of its daily transactions and he delivered the same upon the latter's request in the interest of transparency even if he has no obligation to do so; in-December 2006, he remitted to private respondent BNM, through Ria Lopez ("Lopez" for brevity), the first installment of the latter's thirty percent (30%) share in the profits of his business amounting to P50,000.00, receipt of which was acknowledged by Lopez via electronic mail[12] sent to his wife Millet Balteza; he advised private respondents BNM and FVSC about his readiness to release to them their remaining thirty percent (30%) profit share roughly amounting to P350,000.00, but the latter did not advise him as to the mode and place of remittance of the said share; he promptly paid all his purchases from private respondent BNM upon delivery, either in cash or by issuing a fifteen (15)-day-post-dated check and he does not owe the latter a single centavo for his past purchases; private respondents BNM and FVSC have no right to demand from him to secure their consent before withdrawing or transferring his vaccines and supplies from one bite center to another; as a registered nurse, he

faithfully complies with the tax, employment and social security laws; no alleged acts of sexual harassment purportedly committed upon bite center employees were ever reported; private respondents BNM and FVSC are not entitled to exemplary, nominal and temperate damages and attorney's fees; he did not conceal and misappropriate any collections, sales and funds of the bite centers; the complaint of private respondents BNM and FVSC states no cause of action and he is the real aggrieved party in this case; and, he is entitled to the return of the physical possession, control, management and operation of the twenty one (21) new bite centers, P10,000,000.00 as moral damages, P1,000,000.00 as exemplary damages and P500,000.00 as attorney's fees and litigation expenses.

On October 14, 2008, private respondents BNM and FVSC moved to subpoena the pertinent local government officials and physicians in charge of clinics in the local government units who continuously transact with and take part in the bite center operations, the persons possessing relevant information and in charge with the operations and funds of the bite centers, to order the delivery of funds, financial records, bank statements, inventory, receipts, patient lists and other documents pertinent to the operations and finance of the bite centers under petitioner Balteza's control and for the creation of a Board of Commissioners tasked with the administration of the operations and funds of the bite centers and the enforcement of the MOA.

On March 23, 2009, the lower court issued an order partially granting the Omnibus Motion[13] filed by private respondents BNM and FVSC.

On March 31, 2009, private respondents BNM and FVSC moved[14] for the admission of their amended complaint[15] which impleaded Milagros Balteza ("Milagros" for brevity) and Peoples HealthCare Management, Incorporated ("PHMI" for brevity) as additional defendants and further averred that: petitioner Balteza and Milagros are the president and treasurer of PHMI, respectively; they filed a complaint for syndicated estafa against petitioner Balteza and his cohorts before the Office of the Provincial Prosecutor of Ilocos Sur for misappropriating the funds intended for the operations of the bite centers in Vigan and in Sinait, Ilocos Sur; an information was filed before the RTC, Branch 24, Cabugao, Ilocos Sur and warrants of arrest were issued; criminal cases for violation of the Social Security Act and falsification of public documents filed against petitioner Balteza are also pending before the RTC, Branch 143, Makati City and the Metropolitan Trial Court, Branch 65, Makati City, respectively, and warrants of arrest were likewise issued against him; they recently discovered that petitioner Balteza and Milagros, with intent to evade the effects of the arrest warrants issued against petitioner Balteza, established and incorporated[16] PHMI for the primary purpose of establishing, operating and managing hospitals, clinics, laboratories, pharmacies and other health facilities, and the management of health related activities such as mass vaccination, training, research and mass educational campaign; and, the incorporation by petitioner Balteza and Milagros of PHMI clearly shows their intention to bring the business and subject bite centers outside the lower court's reach and to render any judgment that may be rendered against RNMD ineffective.

On April 17, 2009, petitioner Balteza moved for the reconsideration of the lower court's March 23, 2009 order.

On August 20, 2009, an order was issued by the lower court admitting the amended complaint filed by private respondents BNM and FVSC and denying petitioner Balteza's motion for reconsideration.[17]

Hence, this petition based on this sole ground:

"THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT ISSUED THE ORDER DATED 23 MARCH 2009 PLACING THE BITE CENTERS AND THE FUNDS THEREOF IN CUSTODIA LEGIS AND ORDERING THE CREATION OF A BOARD OF COMMISSIONERS TO OPERATE THE BUSINESS OF PETITIONER." (sic)

Petitioner Balteza contends that: private respondents BNM and FVSC have no reason to seek the creation of the Board of Commissioners because they themselves have already categorically and unqualifiedly cancelled and terminated the MOA, wrote finis to their partnership with him, and have nothing more to do with the RNMD bite centers; the lower court should not have based the grant of the Omnibus Motion on the mere allegations of private respondents BNM and FVSC that have yet to be established during the trial on the merits of this case; and, the assailed March 23, 2009 order of the lower court placed the entire RNMD and his entire business under receivership without any legal basis.

On the other hand, private respondents BNM and FVSC contend that: the lower court had sufficient basis to issue the assailed orders, regardless of the termination and cancellation of the MOA in view of petitioner Balteza's continuous acts of dissipating the bite center funds which are subject of the accounting case; petitioner Balteza's claims that the lower court prejudged the case and relied on the allegations of private respondents BNM and FVSC in issuing the assailed orders are baseless and misleading; the assailed order of the lower court merely implemented the provisions of Section 10, Rule 57 of the Rules of Court and it did not put the bite centers and petitioner Balteza's business under receivership; and, the lower court created the Board of Commissioners to implement the writ of attachment it previously issued.

The petition is bereft of merit.

The lower court committed no grave abuse of discretion in referring the matter to a Board of Commissioners even before the trial proper.

In this case, private respondents BNM and FVSC raised in their Omnibus Motion the particular fact that after the seizure and placing in custodia legis of the several vaccines seized from petitioner Balteza pursuant to the writ of attachment, petitioner Balteza continues to do business and uses the bite centers for his own benefit, their interests in and the profits of the bite centers are in grave danger of being prejudiced and lost while the same are in petitioner Balteza's possession and control. Besides, they are clueless as to how the business of the said bite centers is conducted under petitioner Balteza's complete control. These incidents occurred subsequent to the filing of the complaint by private respondents BNM and FVSC and the answer by petitioner Baluza before the lower court.

Section 2 (c), Rule 32 of the 1997 Revised Rules of Civil Procedure specifically provides that, "when the parties do not consent, the court may upon the application of either or of its own motion direct a reference to a commissioner * * * when a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of a case." Section 3, Rule 32 of the 1997 Revised Rules of Civil Procedure provides, among other matters, that "the order may specify or limit the powers of the commissioner, and may direct him/her to report only upon particular issues, or to do or perform particular acts, or to receive and report evidence only, and may fix the date for beginning and closing the hearings and for the filing of his/her report."

The power of the lower court to order the referral of a case involving attached properties to an appointed Board of Commissioners is confirmed by Section 10, Rule 57 of the 1997 Revised Rules of Civil Procedure which provides, among other things, that "any person owing debts to the party whose property is attached or having in his/her possession or under his/her control any credit or other personal property belonging to such party, may be required to attend before the court in which the action is pending, or before a commissioner appointed by the court, and be examined under oath respecting the same. The party whose property is attached may also be required to attend for the purpose of giving information respecting his/her property, and may be examined on oath."

Hence, petitioner Balteza may be required to attend and be examined under oath before the lower court or before

the board of commissioners to give information with regard to his attached properties in this case.

The declaration and the placing by the lower court of all the bite centers under the control of the parties, inclusive of those enumerated in the complaint of private respondents BNM and FVSC, and all the pertinent funds or existing prior to and those that may accrue after the issuance of the assailed order to be in custodia legis and within its jurisdiction are in consonance with the function of the provisional remedy of writ of preliminary attachment of securing the satisfaction of whatever judgment that might be secured by the attaching creditor in an action against the defendant.

WHEREFORE, premises considered, the petition is denied.

The Orders dated March 23, 2009 and August 20, 2009 of the RTC 143, Makati City in Civil Case No. 07-1010 are hereby AFFIRMED.

SO ORDERED.

Librea-Leagogo and Elbinias, JJ., concur.

Petition denied. Orders affirmed.

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- [1] Rollo, pp. 3-59
 - [2] Rollo, pp. 60-66
 - [3] Rollo, pp. 67-70
 - [4] Rollo, pp. 71-92
 - [5] Rollo, pp. 93-106
 - [6] Rollo, pp. 107-108
 - [7] Rollo, pp. 109-110
 - [8] Rollo, p. 113
 - [9] Rollo, pp. 111-112
 - [10] Rollo, pp. 114-139
 - [11] Rollo, pp. 140-148
 - [12] Rollo, pp. 152
 - [13] Rollo, pp. 193-210
 - [14] Rollo, pp. 312-317
 - [15] Rollo, pp. 318-343
 - [16] Rollo, pp. 363-380
 - [17] Rollo, pp. 213-236

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