

**METROPOLITAN BANK & TRUST COMPANY, PETITIONER, VS.
HONORABLE ROGELIO C. SESCON, AS PRESIDING JUDGE OF
REGIONAL TRIAL COURT, BRANCH 9 OF TACLOBAN CITY AND
SALAZAR REALTY CORPORAT...**

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

This Petition for Certiorari[1] under Rule 65 of the 1997 Rules of Civil Procedure seeks to annul the June 16, 2009 Order[2] denying the Motion to Dismiss and the February 23, 2010 Order denying the motion for reconsideration filed by herein petitioner.

ANTECEDENTS

The petitioner Metropolitan Bank & Trust Company (MBTC for brevity) was one of the subject respondents in the case for the Removal of Cloud Over Title filed by Salazar Ang Realty Corporation (Salazar), through its stockholders. Paragraph 6 of the petition in the RTC, Tacloban City stated that it was a stockholders' derivative suit instituted by Ramon A. Salazar, Jr., Roger A. Salazar and Rosemarie Fernandez in behalf of Salazar Ang Realty Corporation. These stockholders claimed that the corporation obtained from MBTC, the loan of P 18,500,000.00. Consuelo Ang Salazar as the President of the corporation signed the promissory note on October 6, 1992 while Ralph Ang Salazar as the Secretary of the corporation, signed the mortgage contract on January 9, 1996. Foreclosure proceedings were conducted by the respondent sheriff. After the titles of the foreclosed properties of Salazar Ang Realty Corporation were cancelled, new titles were issued to MBTC.

Ramon Ve. Salazar, Director and Vice President of the corporation died on March 30, 1995 before the mortgage was executed. No document was filed with the SEC to show that an election was held to fill the vacancy. Consuelo Salazar also passed away on October 21, 2001. Demand upon the board of directors to file a suit in behalf of the corporation was useless because the board approved the mortgage contract. Salazar through the aforementioned stockholders, asked the court below to annul the foreclosure proceedings, the mortgage contract and certificate of sale of its properties.

The respondent judge of RTC, Branch 9 allegedly assumed jurisdiction over the case even if his branch is not a Commercial Court under A.M. No. 00-11-03-SC which took effect effect on December 15, 2000. In the Order dated April 25, 2002, the respondent judge denied MBTC's Comment with Motion to Dismiss and Counterclaim. He ordered MBTC and the rest to file their Answer or manifest if they are adopting their Comment with Motion to Dismiss and Counterclaims as their Answer. The parties filed their respective Pre-Trial Brief.

On March 11, 2003, MBTC filed a Motion for Inhibition but the respondent judge denied it. On February 1, 2005, MBTC filed a Motion for Leave to File its Amended Answer with Motion to Dismiss but this too was denied in the Order dated December 6, 2005. On February 2, 2009, MBTC filed a Motion to Dismiss citing *Calleja v. Panday* where the Supreme Court said that a non-commercial court has no authority to transfer a commercial case.

The petition of respondents was a derivative suit, hence, an intra-corporate controversy. In A.M. No. 00-11-03-SC, RTC, Branch 8, Tacloban City is the court which has jurisdiction.

On June 16, 2009, the respondent judge issued an Order denying the Motion to Dismiss for the reason that the case did not involve an intra-corporate controversy. While the respondent judge ruled that Sec. 5, P.D. No. 902-A is broad and covers all kinds of controversies between stockholders and corporations, he restricted the coverage thereof by requiring that the suit must be one which arises between a stockholder and the corporation. However, a derivative suit maybe filed by the stockholders if they believe it is necessary to protect the interest of the corporation.

On March 2, 2010, respondent judge issued the Order dated February 23, 2010 denying the Motion for Reconsideration.

Hence, the instant petition by MBTC wherein the following grounds are raised :

I. RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN DENYING PETITIONER'S MOTION TO DISMISS AND RULING THAT THE CASE A QUO IS NOT AN INTRA-CORPORATE CASE DESPITE THE FACT THAT THE SUIT IS CLEARLY A DERIVATIVE SUIT.

II. RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN CONFINING THE CONCEPT OF AN INTRA-CORPORATE CONTROVERSY ONLY TO CONTROVERSIES BETWEEN A STOCKHOLDER AND THE CORPORATION AND RULING THAT THE CASE A QUO DOES NOT FALL WITHIN THE CONCEPT OF INTRA-CORPORATE CONTROVERSY AS IT INVOLVES A PETITION FILED BY A CORPORATION AND SOME OF ITS STOCKHOLDERS AGAINST ANOTHER CORPORATION.

III. RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN DENYING PETITIONER'S MOTION TO DISMISS BY RULING THAT RESPONDENTS CORRECTLY ALLEGED THAT THE LATTER'S VARIOUS CAUSES OF ACTION ARE FOR REMOVAL OF CLOUD (DECLARATION OF NULLITY OF MOTGAGE (sic) CONTRACT, FORECLOSURE PROCEWEDINGS (sic) AND SALE AND ISSUANCE OF THE TITLE IN THE NAME OF PETITIONER) OVER RESPONDENT CORPORATION'SA (sic) TITLE.

On the first ground, the petitioner MBTC states that the allegations in the petition a quo expressly mentioned that it is a derivative suit. The petitioners therein were stockholders as of the time, the act complained of was committed. Demand upon the board of directors to file the suit is useless as time is of the essence. The fact that corporate assets have been registered in MBTC's name is an exception to make the demand. In *Hi- Yield Realty, Incorporated v. Hon. Court of Appeals*[3], the Supreme Court, notwithstanding that the case was a petition for annulment of real estate and foreclosure sale, declared that the case was a derivative suit after observing that it contained such allegation. Under A.M. No. 01-2-04-SC (Interim Rules of Procedure Governing Intra-Corporate Controversies under R.A. 8799), it is the Commercial Court that hear derivative suits.

On the second and third grounds, MBTC stresses that it is of no moment if the causes of action involve nullification or removal of cloud over title (declaration of nullity of mortgage contract, foreclosure proceedings and sale and issuance of the title) because derivative suits cover any suits which a stockholder institutes on behalf of the corporation to enforce its rights. As long as the petition or complaint alleges a derivative suit, its nature is not affected by the cause of action or relief sought. MBTC submits that the continued assumption of jurisdiction by the respondent judge constitutes grave abuse of discretion.

On July 1, 2010[4], this Court issued the Resolution holding in abeyance the resolution of MBTC's application for

the issuance of temporary restraining order and/or prohibitory injunction pending the filing of the comment.

On September 8, 2010, the private respondents filed the Comment. They contend that the respondent judge is not guilty of grave abuse of discretion amounting to lack of jurisdiction in denying the Motion to Dismiss. The respondent judge based his ruling on good law after a judicious consideration of the pleadings and applicable law and jurisprudence. The petition does not also show that the respondent judge exercised his discretion arbitrarily.

The trial court below has in fact jurisdiction over the petition for removal of cloud over title. In the petition they filed with the RTC, they alleged that MBTC failed to ascertain the authority of Consuelo Ang Salazar and Ralph Salazar to act for Tacloban RAS Construction which was not a subsidiary of the petitioner corporation. They also alleged therein that the other public respondents erred in granting the petition for extrajudicial foreclosure as it was not indicated how the obligation became due. Neither were the requisite documents attached thereto. The foreclosure sale below was null and void because the mortgagor was not given personal notice thereof. This rendered the publication of the notice of sale as defective. The sale violated A.M. 99-10-05-0.

The private respondents herein as the petitioners in the court below also sought that Section 47, R.A. 8791 (The General Banking Law of 2000) be declared unconstitutional for violating the equal protection clause. Under Sec. 19 (1) of BP 129, special civil actions for declaratory relief and other similar remedies fall under the exclusive original jurisdiction of the RTC. The court is deemed to have all the necessary powers to exercise effectively its jurisdiction. Split jurisdiction is not favored.

The private respondents claim that MBTC is estopped from questioning the jurisdiction of the trial court. It did not file a motion for reconsideration of the 25 April 2002 Order denying its Comment with Motion to Dismiss and Counterclaim filed earlier. MBTC participated in the proceedings and even manifested that such pleading would serve as its answer. While a question of jurisdiction may be raised at anytime, an exception lies when the party is barred by estoppel.

Last, the private respondents believe that the case of Hi-Yield Realty is inapplicable. A.M. No. 03-03-03-SC, requiring that cases formerly cognizable by the SEC should be filed with the Office of the Clerk of Court of Commercial Courts, took effect on July 1, 2003. However, the case below was filed on November 5, 2001 or two years before the effectivity of the Administrative Matter. In *Alonto v. People*, it was held that where a court has already acquired jurisdiction over a controversy, its jurisdiction to hear the case until its final determination is not affected by new legislation vesting jurisdiction in another tribunal.

The Supreme Court in *Hi-Yield Realty Incorporated, Inc. v. Hon. Court of Appeals*[5], reiterated the requisites for a stockholder's derivative suit enumerated in *Filipinas Port Services, Inc. v. Go*[6], viz : the party bringing the suit should be a shareholder as of the time of the transaction complained of xxx; the party tried to exhaust intra-corporate remedies such as if he had made a demand on the board of directors for the appropriate relief but the latter failed to do so; and the cause of action devolves on the corporation. The complaint below shows that the requisites for a stockholder's derivative suit were not met because it did not aver exhaustion of intra-corporate remedies.

OUR RULING

In essence, the issues presented before Us are:

- Whether the respondent judge who presides over a regular court, Branch 9, RTC, Tacloban City, has jurisdiction over the case for the Removal of Cloud Over Title filed by Salazar Ang Realty Corporation through four of its incorporators-stockholders against Metropolitan Bank and Trust Company (MBTC).

- Whether the respondent judge committed grave abuse of discretion in denying MBTC's Motion to Dismiss by ruling that the court has jurisdiction because the case was not an intra-corporate dispute.

R.A. No. 8799 or The Securities Regulation Code conferred jurisdiction over intra-corporate controversies on courts of general jurisdiction or RTCs, to wit:

SECTION 5. Powers and Functions of the Commission. –

5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: Provided, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. Xxx

Does Civil Case No. 2001-11-164 for Removal of Cloud Over Title, which includes declaration of nullity of foreclosure, mortgage and sale of properties, pertain to an intra-corporate controversy?

R.A. 8799 uses as reference, Section 5 of P.D. No. 902-A (The SEC Reorganization Act), to define intra-corporate controversies[7].

In addition, Rule 1 of the Interim Rules of Procedure Governing Intra-Corporate Controversies under R.A. No. 8799 (A.M. No. 01-2-04-SC) mentions that derivative suits[8] are included as intra-corporate controversies.

In *Reyes v. Regional Trial Court of Makati*, Br. 142[9], the Supreme Court noted the two tests to determine if a controversy is intra-corporate. First, in the relationship test, the main consideration the determination of an intra-corporate controversy is limited to a consideration of the intra-corporate relationship existing between or among the parties. Section 5(b) of PD 902-A, describes the types of intra-corporate relationships as:

- a) between the corporation, partnership, or association and the public
- b) between the corporation, partnership, or association and its stockholders, partners, members, or officers;
- c) between the corporation, partnership, or association and the State as far as its franchise, permit or license to operate is concerned; and
- d) among the stockholders, partners or associates themselves.

In the above-cited case of *Reyes v. Regional Trial Court of Makati*, Br. 142, the Supreme Court recalled of the description it made in *DMRC Enterprises v. Esta del Sol Mountain Reserve, Inc.*[10] of the controversy test. In the controversy test, the mere existence of an intra-corporate relationship does not give rise to an intra-corporate controversy. xxx The controversy must not only be rooted in the existence of an intra-corporate relationship, but must as 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. xxx

According to the Supreme Court, the two tests to determine intra-corporate disputes must concur. Jurisdiction should be determined by considering not only the status or relationship of the parties but also the nature of the question under controversy. In *Speed Distribution, Inc. v. Court of Appeals*,[11] the Supreme Court held that if the nature of the controversy involves matters that are purely civil in character, necessarily, the case does not involve an intra-corporate controversy.

“To determine whether a case involves an intra-corporate controversy, and is to be heard and decided by the branches of the RTC specifically designated by the Court to try and decide such cases, two elements must concur: (a) the status or relationship of the parties, and [b] the nature of the question that is the subject of their controversy.

The first element requires that the controversy must arise out of intra-corporate or partnership relations between any or all of the parties and the corporation, partnership, or association of which they are stockholders, members or 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 the individual franchises. The second element requires that the dispute among the parties be intrinsically connected with the regulation of the corporation. If the nature of the controversy involves matters that are purely civil in character, necessarily, the case does not involve an intra-corporate controversy.' (Citations and some emphases omitted; emphases supplied.)

Analyzing the nature of Case No. 2001-11-164 by using the two-tier test, We rule that it is not an intra-corporate dispute. Case No. 2001-11-164 cannot be classified in any of the types of intra-corporate relationships enumerated in Section 5(b) of PD 902-A because the private respondents^[12] who filed the case below are not the stockholders of MBTC. The rule established in *Lisam Enterprises, Inc., represented by Lolita Soriano, et. al., v. Banco de Oro Unibank, Inc., (Formerly Philippine Commercial International Bank), et. al.*^[13] is an application of the relationship test. Where the complaint is for annulment of mortgage with the mortgagee bank as one of the defendants, the jurisdiction over said complaint is lodged with the regular courts because the mortgagee bank has no intra-corporate relationship with the stockholders. It can then be said that in Case No. 2001-11-164, the stockholders of Salazar Ang Realty Corporation have no intra-corporate relationship with MBTC, the mortgagee bank so that it is the respondent judge who has jurisdiction over the action for removal of cloud, annulment of mortgage and foreclosure proceedings filed against MBTC.

MBTC's other theory is that the suit is also between the private respondents who are the stockholders of Salazar Ang Realty Corporation and the public as represented by the public respondents such as the Register of Deeds and the court sheriff. Granting that this narrowed view of a derivative suit espoused by MBTC passes the relationship test, it fails the controversy test.

The reliefs sought in the petition in Civil Case No. 2001-11-164 range from the removal of cloud over the titles^[14] of the properties of Salazar Ang Realty Corporation to the declaration of nullity of the foreclosure proceedings and certain documents, i.e., promissory note, the mortgage contract, certificate of sale and certificates of title in MBTC's name. Apropos of the controversy test, it is evident that these matters do not concern the rights and obligations of private respondents under the Corporation Code nor of matters relating to the regulation of their corporation, Salazar Ang Realty Corporation.

Jurisprudence in *Eustacio Atwel, et. al. v. Concepcion Progressive Association, Inc.*^[15], supports Our view. The Supreme Court ruled that the question as to who is the true owner of the disputed property xxx is civil in nature and should be threshed out by a regular court. Cases of this nature are cognizable by the RTC under The Judiciary Reorganization Act. The Supreme Court resolved in the *Eustacio Atwel, et. al.* case that the conflict among the parties was outside the jurisdiction of the special commercial court. Hence, the regular court (Branch 9, RTC, Tacloban City), where the respondent judge sits and not the special commercial court (Branch 8, RTC), which has jurisdiction. The respondent judge correctly exercised his jurisdiction when he denied MBTC's Motion to Dismiss. We quote a portion of the assailed June 16, 2009 Order:

"This is a petition filed by a certain corporation and some of its stockholders against another corporation, a government office and government officials or employees and therefore, does not fall within the aforementioned definition of an intra-corporate case or controversy the jurisdiction of which pertains to the designated commercial court.

As correctly alleged by the petitioner in their opposition to movant's subject motion, petitioner's various cause of action in this case are for the removal of cloud (declaration of nullity of the mortgage contract, foreclosure proceedings and sale and issuance of the title in the name of respondent MBTC) over petitioner corporation's

title[16].”

Notwithstanding MBTC's ardent plea, We are not persuaded to apply the 2009 ruling in *Hi-Yield Realty, Incorporated v. Hon. Court of Appeals*. The assertion in *Hi-Yield Realty Inc.*, that the action to annul the real estate mortgage and the foreclosure sale is a mere incident of the derivative suit should be taken within the context that the main action is indeed a derivative suit, which is not so of Civil Case No. 2001-11-164. In order to determine the existence of a derivative suit, We use the 2012 jurisprudence in *Lisam Enterprises, Inc.*, represented by Lolita Soriano, et. al., v. *Banco de Oro Unibank, Inc.*, (Formerly Philippine Commercial International Bank), et. al.[17]. Where the complaint is for annulment of mortgage with the mortgagee bank as one of the defendants, jurisdiction is lodged with the regular courts because the mortgagee bank has no intra-corporate relationship with the stockholders.

This brings Us to the last issue. There is no denying of Our duty to ascertain the grounds to grant a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure. Certiorari lies where a court has acted without or in excess of jurisdiction or with grave abuse of discretion. The phrase “without jurisdiction” means that the court acted with absolute want of jurisdiction whereas the phrase “excess of jurisdiction” means the court has jurisdiction but has transcended the same or acted without any statutory authority. [18] Likewise, “grave abuse of discretion” denotes such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an invasion of positive duty or virtual refusal to perform a duty enjoined by law as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[19]

None of these grounds exist in the instant Petition. It bears reiterating that the respondent judge acted with jurisdiction. Proceeding from that fact, it cannot be said that the respondent judge acted in an arbitrary and capricious manner when he issued the questioned Orders.

WHEREFORE, the petition is DISMISSED. The June 16, 2009 and February 23, 2010 Orders STAND. The application for the issuance of temporary restraining order and/or prohibitory injunction is DENIED for being moot and academic.

SO ORDERED.

Lagura-Yap, and *Quijano-Padilla, JJ., concur.

** While the case wrapper and the title of the Petition state Salazar Realty Corporation, the body of the instant Petition for Certiorari and the Petition in Case No. 2001-11-164 filed before the RTC, state Salazar Ang Realty Corporation.

* Acting Junior Member per Office Order No. 472-12-ABR dated December 12, 2013.

[1] Rollo, pp. 3-46.

[2] Rollo, pp. 47-52.

[3] G.R. No. 168863, June 23, 2009.

[4] Rollo, pp. 387-388.

[5] Footnote 3.

[6] G.R. No. 161886, March 16, 2007.

[7]

- a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission;
- b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or 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;
- c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

[8] SECTION 1. (a) Cases Covered – These Rules shall govern the procedure to be observed in civil cases involving the following:

- (1) Devices or schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association;
- (2) Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members, or associates; and between, any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively;
- (3) Controversies in the election or appointment of directors, trustees, officers, or managers of corporations, partnerships, or associations;
- (4) Derivative suits; and
- (5) Inspection of corporate books.

[9] G.R. No. 165744, August 11, 2008, 561 SCRA 593, 609-612.

[10] G.R. No. 57936, September 28, 1984, 132 SCRA 293.

[11] G.R. No. 149351, March 17, 2004.

[12] Incorporators stockholders who are stated in the title of the petition below are Ramon A. Salazar Jr., Robert A. Salazar, Roger A. Salazar and Rosemarie Salazar-Fernandez, Rollo, p. 54.

[13] Lisam Enterprises, Inc., represented by Lolita A. Soriano, et. al., v. Banco de Oro Unibank Incorporated, G.R. No. 143264, April 23, 2012.

[14] In page 7 (Rollo, p. 60) of Petition in Case No. 2001-11-164, these titles are TCT Nos. T-39342, T-39343, T-39344, T-39345, and T-39346.

[15] G.R. 169370, April 14, 2008.

[16] Rollo, p. 60, Order dated January 18, 2011, p. 2.

[17] G.R. No. 143264, April 23, 2012.

[18] Leung Ben v. O'Brien, 38 Phil 182; Salvador Campos y Cia v. del Rosario, 41 Phil 45.

[19] Searth Commodities Corporation v. Court of Appeals, G.R. No. 64220, 31 March 1992, 207 SCRA 622, S & A Gaisano Incorporated v. Judge Hidalgo, G.R. No. 80397, 10 December 1990, 192 SCRA 224; Government

Service Insurance System v. Judge Florendo, No. L-48603, 29 September 1989, 178 SCRA 76; Genoblazo v. Court of Appeals, G.R. No. 79303, 20 June 1989, 174 SCRA 124; Belisle Investment and Finance Co. v. State Investment House, Inc., G.R. No. 71917, 30 June 1987, 151 SCRA 630; Yaptinchay v. Judge Torres, No. L-26462, 9 June 1969, 28 SCRA 489; Detective & Protective Bureau, Inc. v. Judge Cloribel, No. L-23428, 29 November 1968, 26 SCRA 255; North Negros Sugar Co. v. Hidalgo, 63 Phil. 664 (1936).

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