

**ANTONIO LADERA III, AMY RUTH MITRE, EDGARDO ESPIRITU,
LEANDRO LEGASPI, CRISPIN DELA CRUZ, LUIS LARA IV,
ZORAHAYDA BANIGAN, NENITA D. FAJARDO, RODOLFO TEODORO
AND BAYANI M. BILUA...**

Ponente: BARRIOS, M. M., J.

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BARRIOS, M. M., J.:

Before Us is a Petition for Review under Rule 43 of the Revised Rules of Court challenging the Decision dated 29 November 2013 of public respondent Housing and Land Use Regulatory Board (HLURB) in HLURB Case No. HOA-A-131018-0550 (NCRHOA-062512-1707), the dispositive portion of which reads:

“x x x

WHEREFORE, in view of the foregoing considerations, the appealed judgment is MODIFIED to read as follows:

1. Ordering those who were declared as winners in the June 12, 2012 election to cease and desist from acting as directors of the association and from exercising and performing/discharging the duties, rights and privileges of directors and officers of the association.
2. Ordering the immediate constitution of a Management Committee who will take charge of day-to-day administration of the association until a new set of directors/officers shall have been elected.
3. Ordering the respondents to turnover to the management committee the management of the affairs and operations of the association.
4. Ordering the conduct of a special election of BFRVHAI directors, within thirty (30) days from the last service hereof to the parties, for the remaining term of July 1, 2012 to June 30, 2014 under the supervision of the Homeowners Association Franchising Division of this Office.

Let this case be remanded before the Arbiter who is hereby ordered to constitute and appoint the three (3) member Management Committee from the list of nominees submitted by the parties.

Finally, the Order dated 24 October 2013 suspending the execution of the Decision dated August 29, 2013 is hereby LIFTED and let the Writ of Execution dated 12 September 2013 be implemented.

All other claims and counterclaims are likewise dismissed for lack of merit.

Let a copy of this Order be furnished the Homeowners Associations Unit of this Office.

SO ORDERED.”

THE ANTECEDENT FACTS

The BF Resort Village Homeowners Association, Inc. (BFRVHAI) held an election on 17 June 2012 for the members of its Board of Directors for the period 2012-2014, which election was supervised by two (2) representatives from public respondent's office, namely, Ms. Gloria Apresto and Ms. Rachel Salvatierra. Private respondents, as candidates of the United Sectoral Alliance Party (USAP) who either lost or were disqualified during the said election, filed an Omnibus Complaint dated 21 June 2012 praying for the examination of election paraphernalia to confirm election fraud and irregularities; for Ms. Apresto and Ms. Salvatierra to report that election fraud and irregularities were committed; for the nullification of the said election and its results; for a cease and desist order to be issued against petitioners; for the conduct of a new election where private respondents Arnel Ducat and Flordeliza Pe Benito would be allowed to run; for some of the petitioners to be disqualified as candidates, and for the creation of a management committee to carry out daily operations until a new set of Board of Directors is elected and constituted.

In their Omnibus Complaint, it was stated that private respondents Ducat and Benito were disqualified because they were told by staff members of the Election Committee that the deadline for submission of the certificates of candidacy were extended from 5:30 o'clock in the afternoon to 12:00 o'clock midnight of 28 May 2012. Hence, they filed their certificates of candidacy beyond the 5:30 P.M. original deadline.

Private respondents likewise pointed out that petitioner Antonio Ladera III (who won as President of BFRVHAI during the assailed election) was allowed to walk in and out of the voting area at his pleasure. There were also marshalls or security guards roaming around the area which situation allegedly sowed fear among voters, especially those who wanted to vote for USAP candidates. A number of voters were disenfranchised as their names were not on the master list. Private respondents also received reports that BFRVHAI photocopying machines were taken out and used during the said election, making it easy for proxy voters – most of whom were presumably voters of petitioners – to submit and accomplish necessary documents for proxy voting. There was no requirement for proxy voters to register prior to the election, and household helpers were allowed to participate as proxy voters. Worse, some proxies represented different individuals and hence, were allowed to repeatedly vote. The food and campaign materials consumed and used by petitioners were allegedly procured using BFRVHAI funds.

Petitioners, on the other hand, argued that the Omnibus Complaint should have been dismissed for failure to comply with the 2011 HLURB Rules of Procedure, particularly with the requirement to go through the Election Committee before proceeding to public respondent. Moreover, the election was supervised by public respondent's own employees; hence, the election is cloaked with the presumption of regularity. The allegations of fraud and irregularities were mere speculations. They also did not commit any abuse after they assumed their positions; in fact, the daily operations such as garbage collection and general services in the subdivision improved and even the crime rate was reduced because of the installation of CCTVs. Therefore, there was no reason to issue a cease and desist order nor to create a management committee.

Arbiter Marino Torres ruled in favor of private respondents in his Decision dated 29 August 2013 and promptly issued a Writ of Execution dated 12 September 2013. Upon appeal made by petitioners, public respondent affirmed the Decision dated 29 August 2013 in its herein assailed Decision dated 29 November 2013.

Thus, petitioners filed the instant petition on the following grounds:

I.

THE QUESTIONED DECISION OF THE ARBITER DATED AUGUST 29, 2013, AND THE DECISION OF THE BOARD OF COMMISSIONERS DATED/PROMULGATED NOVEMBER 29, 2013, AFFIRMING

THE SAID DECISION OF THE ARBITER WITH MODIFICATION, ARE CONTRARY TO LAW, JURISPRUDENCE AND THE EVIDENCE ON RECORD.

II.

THE PUBLIC RESPONDENT BOARD OF COMMISSIONERS COMMITTED GRAVE ERROR OF FACT AND LAW IN RENDERING THE QUESTIONED DECISION.

OUR RULING

We find the petition meritorious.

It is expressly provided under the 2011 HLURB Rules of Procedure that –

Section 15. Complaint. –

x x x

(g) In homeowners association cases, a certification issued by the chair of the Election Committee in cases involving elections, or by the chair of the Grievance Committee or any other committee constituted to resolve any matter in controversy at the association level, as the case may be, stating under oath that the parties have been invited to participate in the proceedings to settle the dispute but that no amicable settlement was reached.

In the absence of an Election Committee and Grievance Committee or refusal to issue the certification, an affidavit attesting to this fact shall be made and further stating that complainant has exhausted administrative remedies.

Non-compliance with any of the above requirements shall be a ground for the dismissal of the complaint without prejudice. x x x[1] (Emphasis provided.)

In this instance, the Omnibus Complaint filed by private respondents obviously involved an election contest of a homeowners association. As such, private respondents were obliged to follow the above-quoted precondition. There was, therefore, a clear mandate for the private respondents to have attached to their Omnibus Complaint a certification that they were not able to settle their dispute before the Election Committee or that no procedure to raise their concern before the Election Committee existed. Instead, private respondents stated in their Omnibus Complaint that –

13. The existing Amended By-Laws of the BFRVHAI do not provide a period for the resolution of election controversy.

14. The period for election protest of 24 hours provided by the 2012 ELECOM violates the Section 90, Rule 24, Election Contest, HLURB 2011 Rules of Procedure and is, therefore, ILLEGAL and INEFFECTUAL.[2]

A careful review of the documents and evidence presented, however, reveals that Section 4, Article 6 of the Amended By-Laws of the Association gave the BFRVHAI COMELEC the authority to take cognizance of and resolve election controversies and protests. Pursuant to this mandate, the COMELEC promulgated Resolution No. 01 or the Rules and Regulations Governing the 17 June 2012 Election for the 11-Member 2012-2014 Board of Directors on 14 May 2012, which Resolution No. 01 provided under its Section 5 (n) that –

n) Election protest and contest must be in writing and shall be filed with the COMELEC within twenty-four (24) hours immediately following the election. Any election protest and contest at any given time shall not suspend the election proceedings and proclamation of winners.[3]

Contrary to the allegation of private respondents, therefore, they had a specific venue for their grievances to be

aired and resolved before an action could have been taken before public respondent. Moreover, the claim that Section 5 (n) of the COMELEC violates Section 90, Rule 24, 2011 HLURB Rules of Procedure has no basis. The said Section 90 reads thus –

Section 90. Filing of Election Contest. – In addition to the requirements in Section 15 of this (sic) Rules, the complaint in an election contest must state that the case was filed within ten (10) days from receipt of the resolution of the controversy by the association as provided in its bylaws. If the bylaws of the association do not provide for a procedure for resolution of the controversy, the complaint shall be filed within ten (10) days from the date of the election or proclamation, whichever is later.

There is no prohibition for the COMELEC to set a period for the filing of an election protest, nor does Section 90 recommend a specific period for the filing and resolution of such contest. It only mandates the complaining party to state that the action raised before public respondent was filed ten (10) days from receipt of the resolution of the association or from the date of election or proclamation, whichever is later.

That the Omnibus Complaint pertains to an election contest is clear from the allegations and reliefs sought by private respondents. As enumerated above, these allegations and reliefs revolved around the election and ultimately sought for the nullification of the results thereof. Section 89, Rule 24, 2011 HLURB Rules of Procedure defines an election contest to be a controversy over a claim to an elective office, validation of proxies, or the manner and validity of elections, among others. The Omnibus Complaint, thus, is an election contest; hence, private respondents should have complied with Sections 15 and 90 of the 2011 HLURB Rules of Procedure. Not having done so, public respondent should have properly dismissed the Omnibus Complaint at the outset.

Assuming *arguendo* that public respondent validly assumed jurisdiction, the Omnibus Complaint must still be dismissed for lack of merit. It is axiomatic that the party who asserts the affirmative of an issue or alleges a fact has the burden of proving the same. However, mere allegations cannot be fairly considered as evidence.^[4] Private respondents banked highly on allegations and unverified reports; there are no supporting documents nor affidavits from persons who had personal knowledge of any irregularity that occurred during the elections. Private respondents Ducat and Benito admittedly filed their certificates of candidacy beyond the deadline provided in COMELEC Resolution No. 01. Aside from the allegation that some staff members told Ducat and Benito that the deadline was extended, no other evidence was presented to prove the veracity thereof. The said staff members did not attest thereto, nor was there any other document that could at least cast doubt on the validity of COMELEC Resolution No. 01.

Likewise, COMELEC Resolution No. 01 expressly stated that the master list of qualified voters would be certified by the Association Secretary and Treasurer as of 05 June 2012, and that the COMELEC will rely only on the certified list as released by the said individuals. The COMELEC was not the body that prepared the list. It even stated that “[a]ll queries relating thereto x x x must be coured directly to the Association.”^[5] Without any substantial evidence that the COMELEC manipulated the master list, there is no reason to consider that voters were disenfranchised nor that the COMELEC caused the disenfranchisement.

COMELEC Resolution No. 01 also allowed proxy voting for as long as the proxy can present to the COMELEC on election day the originals of the following: (a) the clearly-worded proxy in writing and signed by the member; (b) a government-issued identification card (ID) of the member (with the signature thereon similar to the signature on the proxy); and (c) a government issued ID of the proxy.^[6] These must also be photocopied so that the COMELEC can keep records thereof. These rules and requirements were posted at the village clubhouse and disseminated to all parties and sector heads. There is no evidence that, if indeed the homeowners found the rules oppressive or prone to abuse, protests were made against these rules at the time of posting up until the elections

were held.

A plaintiff always has the burden of proof of first proving his claims. Even in cases where a defendant is declared in default and is deprived of his right to present evidence, the reliefs prayed for by the plaintiff are not automatically granted and the evidence must still be weighed to determine whether the plaintiff has sufficiently presented evidence to justify that a judgment be awarded in his favor.[7] Unfortunately, private respondents failed to discharge this burden.

We note that on 26 January 2014, a special election was held following the execution of the assailed Decision dated 29 November 2013. This election has become baseless for being grounded on an invalid decision.

WHEREFORE, in view of the foregoing, the Petition is GRANTED. The assailed Decision dated 29 November 2013 and the Decision dated 29 August 2013 of public respondent Housing and Land Use Regulatory Board as well as the special election held on 26 January 2014 pursuant to the aforesaid decisions are ANNULLED and SET ASIDE. The Omnibus Complaint dated 21 June 2012 is DISMISSED.

SO ORDERED.

Reyes, Jr., (Chairperson) and Pizarro, JJ., concur.

[1] Section 15, Rule 5, 2011 HLURB Rules of Procedure.

[2] Rollo, p.1234; Omnibus Complaint dated 21 June 2012, p.4.

[3] Rollo, p.1330; Resolution No. 01 dated 14 May 2012, p.5.

[4] Luxuria Homes, Inc. and/or Aida M. Posadas v. Court of Appeals, et al., G.R. No. 125986, 28 January 1999.

[5] Rollo, p.1327; Resolution No. 01 dated 14 May 2012, p.2.

[6] Ibid.

[7] Luxuria Homes, Inc. v. Court of Appeals, et al., supra note 4.

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