WORLD WAR II VETERANS LEGIONNAIRES OF THE PHILIPPINES, INC. REPRESENTED BY NADY B. BESARIO, PRESIDENT/CHAIRMAN OF THE BOARD, PETITIONER, VS. HONORABLE JUDGE ALEXANDER S. BALUT-B...

Ponente: BRUSELAS, JR. J.

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BRUSELAS, JR. J.:

Before us is a petition for certiorari under Rule 65 which seeks to annul the 07 October 2013[1] and 02 May 2014[2] Orders of the Regional Trial Court (RTC), Branch 76, Quezon City that dismissed the complaint of the petitioner, the dispositive portion of which reads:

> "WHEREFORE, premises considered, this case is dismissed.
>
> SO ORDERED."[3]

The antecedent, relevant facts of the case as culled from the documents submitted are as follows:

The herein petitioner World War II Veterans Legionnaires of the Philippines, Inc. represented by Nady B. Besario ("Besario Group") filed a complaint[4] dated 12 October 2010 before the court a quo for Cancellation of Title. The Verification and Certification against non-forum shopping was signed by Nady B. Besario ("Besario").

A motion to dismiss was filed by herein respondent Our Lord's Grace Montessori School and Colleges, Inc. (OLGM), however, the motion was denied by the trial court in an Order[5] dated 15 March 2012.

On 04 June 2012, a Motion to Substitute Plaintiff's Representative was filed. In the said motion, herein petitioner moved that Smiley Salas ("Salas Group") be recognized and be substituted as the duly constituted representative of the herein petitioner corporation. Attached in the motion was a Secretary's Certificate authorizing Salas to be the representative and attorney-in-fact of the corporation.

An Order[6] dated 27 November 2012 was issued by the trial court deferring the action on the motion to substitute pending submission of certified true copies of the annexes. Upon the submission of the required annexes, another Order[7] dated 07 December 2012 was issued recognizing Salas as the herein petitioner's substitute attorney-in-fact. The trial court held:

> "The issue on representation is administrative purely within the discretion of the plaintiff-corporation, through its governing board of trustees. This Court cannot control such corporate matter."[8]

On 11 December 2012, a motion for reconsideration[9] was filed by Besario group and prayed that the trial court revisit its findings on Salas group's motion to substitute. Herein respondent OLGM filed its Comment[10] dated 21 February 2013 praying that the case be dismissed for being fatally defective and for lack of merit.

On 20 June 2013, an Order was again issued setting the "motion to substitute" for hearing on 23 August 2013 to tackle the issues about: (1) why the amended complaint should not be dismissed for failure to comply with

Section 5, Rule 7 of the Rules of Court?; and (2) who was the real attorney-in-fact of the corporation?

On 07 October 2013, the assailed Order[11] was issued by the trial court dismissing the case for non-compliance with the rule on verification and certification against forum shopping , to wit:

> "The order substituting Nady Besario as plaintiff's purported attorney-in-fact renders the complaint non-compliant with the foregoing rule. His authority to sign then becomes doubtful. As to the substitution of Smiley Salas, reliance is had on a board resolution submitted. On its face, the resolution is valid. However, as it now appears, plaintiff is represented by two persons.
>
> As borne out by the records, there is a pending case for nullification of by-laws and articles of incorporation between the two (Civil Case No. Q-09-64117 entitled World War Veterans Legionnaires of the Philippines, Inc. rep. by Nady Besario vs. Smiley Salas, et.al.) before a commercial court (Regional Trial Court, Branch 90, Quezon City). This is of pivotal importance. The case will be determinative of plaintiff's lawful attorney-in-fact.
>
> For non-compliance with the said rule and in deference with the resolution of the issue within the jurisdiction of a court clothe with the special knowledge and experience, this case must in the meantime suffer the consequent dismissal.
>
> WHEREFORE, premises considered, this case is dismissed.
>
> SO ORDERED."[12]

Nady Besario's group and Smiley Salas' group separately moved to reconsider the trial court's order, however, the trial court maintained its ruling.

Hence, this certiorari petition initiated by Besario group.

A Minute Resolution[13] dated 12 August 2014 was issued by the Court directing the petitioner to submit a board resolution evidencing the authority of Nady Besario as the Chairman and President of the petitioner corporation.

The petitioner Besario group submitted its Compliance[14] dated 20 August 2014 with an attached Secretary's Certificate[15] that provides that on 8 August 2014 a special meeting of the Board of Directors was held resolving that Nady Besario being the National President of World War II Veterans Legionnaires of the Philippines, Inc., is retained to act in behalf of the corporation.

The petitioner raised the following issues for resolution:

> "1. WHETHER THE PUBLIC RESPONDENT HONORABLE RTC BRANCH 76-HON. JUDGE ALEXANDER S. BALUT COMMITTED GRAVE ABUSE OF DISCRETION IN DISMISSING THE COMPLAINT FOR PENDENCY OF ANOTHER CASE WITH RTC BRANCH 90-QC FOR CORPORATE DISPUTE AND FOR NON-COMPLIANCE ON THE VERIFICATION RULE.
>
> 2. WHETHER THE PUBLIC RESPONDENT HONORABLE RTC BRANCH 76-HON. JUDGE ALEXANDER S. BALUT COMMITTED GRAVE ABUSE OF DISCRETION WHEN HE ALLOWED SMILEY SALAS AND HIS GROUP TO SUBSTITUTE PLAINTIFF'S REPRESENTATIVE."

Palpably present is an issue about the validity of representation and relatedly, an issue about the board of directors which adopted a resolution that retained Besario as the legal representative of the corporation being the legitimate board of directors of the corporation vis-a-vis the board of directors which named Salas as the representative.

In the instant petition, the petitioner corporation represented by Besario asserts that Salas fraudulently represented

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himself as plaintiff's representative to mislead the court a quo into believing that he was the rightful representative of the plaintiff corporation when in truth, the plaintiff was represented by Besario; that it was the Besario group which filed the case against OLGM and the petitioner never resolved to authorize Salas to substitute Besario as plaintiff's representative; that Besario is the real and rightful representative of plaintiff World War II Veterans Legionnaires of the Philippines, Inc. and; that the Besario group is the one that filed the case against the Salas group before Branch 90 of RTC Quezon City.

We find the argument to be unpersuasive.

It has been consistently held that in actions and petitions instituted by corporations, an individual corporate officer cannot exercise any corporate power pertaining to the corporation without authority from the board of directors pursuant to Section 23,[16] in relation to Section 25[17] of the Corporation Code which clearly enunciates that all corporate powers are exercised, all business conducted, and all properties controlled by the board of directors.[18]

In AF Realty & Development, Inc. v. Dieselman Freight Services, Co. it was held thus:[19]

> “Section 23 of the Corporation Code expressly provides that the corporate powers of all corporations shall be exercised by the board of directors. Just as a natural person may authorize another to do certain acts in his behalf, so may the board of directors of a corporation validly delegate some of its functions to individual officers or agents appointed by it. Thus, contracts or acts of a corporation must be made either by the board of directors or by a corporate agent duly authorized by the board. Absent such valid delegation/authorization, the rule is that the declarations of an individual director relating to the affairs of the corporation, but not in the course of, or connected with, the performance of authorized duties of such director, are held not binding on the corporation.” (Emphasis Ours)

In this case, it is the authority of Besario to represent and act for and on behalf of the corporation World War II Veterans before the court a quo that had been challenged and ruled upon accordingly. The legitimacy of the board that resolved to retain Besario has likewise been put to question.

The general rule is that a corporation can only exercise its powers and transact its business through its board of directors and through its officers and agents when authorized by a board resolution or its bylaws. The power of a corporation to sue and be sued is exercised by the board of directors. The physical acts of the corporation, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate bylaws or by a specific act of the board. Absent the said board resolution, a petition may not be given due course.[20]

Here, the trial could not be faulted when it held that Besario's authority became doubtful when Salas moved with supporting evidence to substitute Besario as the corporation's representative submitting a board resolution to that effect, amongst others.

Rule 7, Section 5 of the 1997 Revised Rules on Civil Procedure provides:

> Sec. 5. Certification against forum shopping. — The plaintiff or principal party shall specify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and, (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or

> other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

The purpose of verification is to secure an assurance that the allegations in the pleading are true and correct and that it is filed in good faith. True, this requirement is procedural and not jurisdictional.[21]

In Bank of the Philippine Islands v. Court of Appeals,[22] the Court held that the application of the rules must be the general rule, and the suspension or even mere relaxation of its application, is the exception. The Court may go beyond the strict application of the rules only in exceptional cases when there is at least a substantial compliance with the rule.[23] In this case, there cannot be a relaxation of the rule on verification and certification against forum shopping because the very identity of the real and authorized representative of the corporation is still being determined in another proceeding before the appropriate branch of the RTC.

In Fuentebella and Rolling Hills Memorial Park v. Castro,[24] the Supreme Court held:

> "The reason for this is that the principal party has actual knowledge whether a petition has previously been filed involving the same case or substantially the same issues. If, for any reason, the principal party cannot sign the petition, the one signing on his behalf must have been duly authorized.
>
> . . . Where the petitioner is a corporation, the certification against forum shopping should be signed by its duly authorized director or representative . . . [I]f the real party-in-interest is a corporate body, an officer of the corporation can sign the certification against forum shopping as long as he is authorized by a resolution of its board of directors.
>
> xxx xxx xxx
>
> A certification without the proper authorization is defective and constitutes a valid cause for the dismissal of the petition."

Hence, a certification which had been signed without the proper authorization is defective and constitutes a valid cause for the dismissal of the petition.[25] While there have been instances when the Court dispensed with technicalities on the basis of special circumstances or compelling reasons, there is no such circumstance or reason in the present case which warrants the liberal application of technical rules.

A perusal of the instant petition, fails to show and demonstrate a prima facie case of either a grave abuse of discretion or lack of jurisdiction on the part of the respondent trial court. The pieces of document submitted disclose that the verification and the certification against forum shopping[26] appended to the complaint filed before the trial court was signed by a certain Nady B. Besario without any showing or indication that he was duly authorized by the corporation to sign for and on its behalf as there was no secretary's certificate that accompanied the complaint to prove that a board resolution was duly passed to authorize Besario to act for and on behalf of the corporation. On the other hand, in its motion to substitute plaintiff's representative, Smiley Salas Group had attached a Secretary's Certificate[27] to attest that a board resolution was approved by the board of trustees of the corporation constituting Salas to be the representative of the corporation. Given these circumstances, there can be no grave abuse of discretion on the part of the trial court when it dismissed the complaint on the ground of non-compliance with the rule on verification and certification against forum shopping.

Also, we find no grave abuse of discretion when the court a quo ruled that the pending intra-corporate case of nullification of by-laws and articles of incorporation before Branch 90 of the RTC Quezon City between the

group of Nady Besario and Smiley Salas, who both claim to be duly authorized representatives of the World War II Veterans and Legionnaires of the Philippines, Inc., militates against the further prosecution of the action against the herein private respondents.

The “Compliance”[28] submitted in response to our Resolution of 12 August 2014 by the petitioner (Besario group) cannot favor petitioner's cause because the certificate therein enclosed appears to be lately executed and curative in nature. It cannot alter the basic fact that the question of legitimate representation by either the Besario group or Salas group is precisely in dispute before the Special Commercial Court in Quezon City (RTC Branch 90).

A certiorari petition is an extraordinary remedy and may be availed of only upon showing that there is grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any tribunal, board or officer exercising judicial or quasi-judicial functions. Grave abuse of discretion means such capricious and whimsical exercise of judgment amounting to excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of personal hostility.[29] Thus, as long as a court acts within its jurisdiction, any alleged errors committed in the exercise of discretion will amount to nothing more than errors of judgment which are not reviewable in a special civil action of certiorari.

WHEREFORE, the petition is DENIED DUE COURSE. It is consequently DISMISSED.

IT IS SO ORDERED.

Bueser, and [*]Paredes, JJ., concur.

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[*] Acting Junior Member per Office Order No. 55-15-ABR dated 23 February 2015

[1] Written by Presiding Judge Alexader S. Balut in Civil Case No. Q-10-68097 entitled World War II Veterans Legionnaires of the Philippines, Inc. v. Our Lord's Grace Montessori School and Colleges Inc. and Rafael Ortañez, Grace P. Hilario, Benjamin C. Santos, Ofelia Calcetas-Santos, Ester P. Pamatpat, Rollo, p. 31-32

[2] Id., p. 33

[3] Id., p. 32.

[4] Rollo, pp. 34-61

[5] Id., pp. 136-137

[6] Id., pp. 144-145

[7] Id., p. 147

[8] Rollo, p. 147

[9] Id., pp. 148-156

[10] Id., pp. 206-210

[11] Id., pp. 31-32

[12] Id., p. 32

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[13] Id., p. 234

[14] Id., p. 235

[15] Id., p. 239

[16] Sec. 23. The board of directors or trustees. — Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified.

[17] The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and the by-laws of the corporation. Unless the articles of incorporation or the by-laws provide for a greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is a quorum shall be valid as a corporate act, except for the election of officers which shall require the vote of a majority of all the members of the board.

[18] Roy Pasos v. Philippine National Construction Corporation, G.R. No. 192394, July 3, 2013

[19] G.R. No. 111448, 16 January 2002, 373 SCRA 385.

[20] Salenga v. Court of Appeals, G.R. No. 174941, February 1, 2012, 664 SCRA 635, 656, 662.

[21] Firme v. Bukal Enterprises and Dev't. Corp., G.R. No. 146608. October 23, 2003460 Phil. 321.

[22] G.R. No. 168313, October 6, 2010, 632 SCRA 322.

[23] Id. at 332-333, citing Tible & Tible Company, Inc. v. Royal Savings and Loan Association, G.R. No. 155806, April 8, 2008, 550 SCRA 562, 580-581.

[24] G.R. No. 150865, June 30, 2006, 494 SCRA 183.

[25] Loquias v. Office of the Ombudsman, G.R. No. 139396, August 15, 2000, 338 SCRA 62.

[26] Rollo, p. 36

[27] Rollo, pp. 142-143

[28] Id., pp. 235-236

[29] Flaminiano vs. Adriano, et.al. G.R. No. 165258, February 4, 2008, 543 SCRA 605 citing Zarate v. Maybank Philippines, Inc., G.R. No. 160976, June 8, 2005, 459 SCRA 785, 794.

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