

**CENTRAL COOPERATIVE EXCHANGE, INC., PLAINTIFF-APPELLEE,
VS. NICOLAS T. ENCISO, AND THE HONORABLE COURT OF APPEALS,
DEFENDANT-APPELLEE.**

G.R. No. L-35603. June 28, 1988

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review of the decision of the Court of Appeals[*] dated June 20, 1972, affirming the decision of the then Court of First Instance of Manila, Branch XV, in Civil Case No. 4439, dismissing a complaint by herein petitioner against herein private respondent to recover a sum of money received by the latter from the corporation, while he was serving as member of the Board of Directors of the Exchange.

As gathered from the records, the antecedent facts of this case are as follows:

Petitioner Central Cooperative Exchange, Inc. is the National Federation of Farmers' Cooperative Marketing Association (FACOMA) in the Philippines. Its single major stockholder is a government entity, the Agricultural Credit and Cooperative Financing Administration (ACCFA) now Agricultural Credit Administration (ACA). as reorganized under the Land Reform Code. Respondent Nicolas T. Enciso was then member of the Board of Governors of ACCFA and concurrently a member of petitioner's Board of Directors from August 1, 1958 to January, 1960.

The ACCFA took over the management of the affairs of CCE by virtue of a resolution of the latter's board of directors and ACCFA removed the general manager of CCE and on January 22, 1960, designated Eugenio V. Mcndoza, one of ACCFA's staff officers, as Officer-in-Charge of petitioner corporation (Petition; Rollo, pp. 2-3).

In various meetings, the Board of Directors of the CCE, unanimously adopted the following Resolutions:

"(1) May 28, 1958 — Res. No. 41, granting a kilometrage allowance of P35.00 to every CCE director who uses his own car in attending Board Meetings (Exh. L, p. 79);

"(2) July 8, 1958 — Res. No. 52, appropriating the amount of P10,000.00 as discretionary fund of the Board of Directors of the CCE (Exh. G, p. 107-G);

"(3) July 10, 1958 — Res. No. 49, granting a commutable allowance of P200.00 per month to each CCE director, starting July 1, 1958, in lieu of the regular waiting time per diem and transportation expenses in Manila while attending regular and special Board Meetings and committee meetings (Exh. I, p. 115);

"(4) July 24, 1958 — Res. No. 57, amending Resolution No. 49 (FY 1958) and granting to each Director a monthly commutable allowance of P200.00 in lieu of waiting time per diem and commutable transportation allowance of P20.00 for attending meetings in Manila (Exh. F, p. 124);

"(5) June 11, 1959 — Res. No. 39, increasing the monthly commutable allowance of each CCE Director from P300.00 to P500.00 per month but cancelling the authorized per diems and transportation expenses for

FACOMA visitations (Exh. F, p. 75); and

"(6) October 9, 1959 — Res. No. 87, appropriating the sum of P10,000.00 as commutable discretionary fund of the Board of Directors (Exh. J, p. 192),"

As shown by the payrolls and petty cash and check vouchers of the CCE, Nicolas T. Enciso, as director of said Exchange, received as compensation in the form of commutable per diem, per diem Facoma visitations, kilometrage allowance, commutable discretionary funds and representation expenses in the total amount of P10,967.85 for the period 1958 to 1960 (CA-G.R. No. 32593-R; Rollo, p. 19).

On October 22, 1960, CCE filed a complaint with prayer for a writ of attachment verified by its Officer-in-Charge, against Nicolas T. Enciso for the recovery of said amount, the same having been collected and received by Enciso in violation of Section 8, Article V of CCE's By-Laws, which reads:

"Section 8. Compensation. — The compensation, if any, and the per diems for attendance at meetings of the members of the Board of Directors shall determined by the members of any annual meeting or special meeting of the Exchange called for the purpose." (Ibid.; Rollo, pp. 19-20).

and of the resolution adopted by the stockholders in their annual meeting on January 31, 1956, that the "members of the board of Directors attending the CCE (plaintiff) board meetings be entitled to actual transportation expenses plus the per diem of P30.00 and actual expenses, while waiting." Upon plaintiffs (petitioner herein) filing of a bond, the lower court issued an Order of Attachment (Ibid.; Rollo, p. 20).

Otherwise stated petitioner claims it is the stockholders not the board of directors who can fix the compensation per diem, and allowances of the members of the Board of Directors.

In his answer, respondent stated that he was a director of petitioner and that the amount of compensation and per diems of the directors was fixed by stockholders in their annual meeting. As affirmative defenses, he averred that: (1) plaintiff corporation has neither the legal personality to institute the action; nor to question the legality of the resolutions enacted by the Board of which he is a member; (2) plaintiff corporation is guilty of laches; (3) that the stockholders had ratified in their General Annual Meetings the acts of the Board of Directors, including the collection of the amounts in question; and (4) under the circumstances, CCE is under estoppel to seek the refund of the amounts involved in the litigation (Ibid.; Rollo, p. 20; Petition, Rollo, p. 4).

After trial, the lower court rendered judgment in favor of defendant (private respondent herein) and dismissed plaintiffs complaint as well as defendant's counterclaim with costs against plaintiff (Record On Appeal, p. 70).

On appeal to the Court of Appeals, the trial court's decision was affirmed (Rollo, p. 26). Petitioner's motion for reconsideration of the said decision was denied (Rollo, p. 40).

Hence, this petition.

In the resolution of October 16, 1972, this Court gave due course to the petition. The brief for the petitioner was filed on November 22, 1972 (Rollo, p. 37), while the brief for the private respondent was filed on April 27, 1973 (Rollo, p. 53).

The petitioner raises the following issues:

I

THE LOWER COURT ERRED IN FINDING AND CONCLUDING THAT THE PRESENT ACTION AS FILED CAN NOT BE DEEMED A CORPORATE ACT OF APPELLANT CORPORATION AND THAT APPELLANT'S STOCKHOLDERS HAD NOTHING TO DO WITH THE FILING OF THIS CASE.

II

THE LOWER COURT ERRED IN FINDING AND CONCLUDING THAT THE VARIOUS RESOLUTIONS OF APPELLANT'S FORMER BOARD OF DIRECTORS AUTHORIZING AND APPROPRIATING COMPENSATION AND OR PER DIEMS OR ALLOWANCES FOR THEMSELVES (EXHS. "T", "G", "H", "Y", "J", and "L") ARE NOT VIOLATIVE OF APPELLANT'S BY-LAWS AND THE MANDATE OF THE STOCKHOLDERS.

III

THE LOWER COURT ERRED IN FINDING AND CONCLUDING THAT APPELLANT IS UNDER ESTOPPEL TO QUESTION THE AFORESAID BOARD RESOLUTIONS OR THE PAYMENTS MADE TO APPELLEE THEREUNDER.

IV

THE LOWER COURT ERRED IN FINDING THAT A PREVIOUS DEMAND UPON APPELLEE IS PREREQUISITE FOR THE INSTITUTION OF THIS ACTION.

The main issue in this case is whether or not the board of directors of the petitioner had the power and authority to adopt the resolutions above-enumerated which appropriated funds of the corporation for per diems, transportation allowance and discretionary funds for the members of its Board of Directors.

The petitioner contends that the resolutions in question enacted by the Board of Directors are contrary to the By-Laws of the federation and, therefore, not within the power of the board of directors to enact as specifically ruled by this court in *Central Cooperative Exchange, Inc. vs. Concordio Tibe, Sr.* and the Court of Appeals, G. R. No. L-27972, June 30, 1970. The private respondent was a member of the board of directors from August 1, 1958 up to the end of January 1960 and participated in the enactment of the said resolutions and received sums of money by virtue of the same.

It is further argued by the petitioner that the Court of Appeals erred in holding that the questioned resolutions are merely voidable and may be ratified by the stockholders because the said board resolutions are illegal per se for the reason that: (1) the directors are not entitled to compensation even without the express reservation of the power to grant the same unto the stockholders; (2) the resolutions were already declared 'contrary to the bylaws' and 'not within the power of the board of directors to enact'; and (3) the board resolutions were enacted 'in violation of the express prohibition in the by-laws' they having been found to be "specifically withheld from the board of directors, and reserved to the stockholders." The exercise of such withheld power by the board renders the act resulting therefrom illegal and void.

On the other hand, the private respondent maintains that the questioned resolutions are all valid and legal, as resolved pursuant to Section 8, Article V of the petitioner's By-Laws by its stockholders on January 31, 1956, that "members of the Board of Directors attending the CCE Board Meeting be entitled to actual transportation expenses plus the per diems of P30.00 and actual expenses while waiting." It was inferred from this resolution that the stockholders intended to allow the members' actual transportation expenses and actual expenses while waiting, without limitations.

The private respondent also argued that the discretionary funds cannot be considered as compensation because the meaning of the term 'compensation' as applied to officers is remunerations in whatever form it may be given, whether it be in salaries and fees, or both combined, whereas the amounts drawn as discretionary funds are actually spent by the directors in carrying negotiations with third persons which are necessary in managing the affairs of the corporation.

Another point raised by the private respondent is the verification of the complaint by the Officer-in-Charge which

cannot be considered as in compliance with the legal requirement, for the reason that the Officer-in-Charge is not of the category of a General Manager who is the one authorized to use the name of the corporation in filing a suit of this nature.

The petition is impressed with merit.

It is not disputed that during the term of private respondent as a member of the Board of Directors, he collected sums of money by virtue of the Resolutions in question.

In an earlier case, *Central Cooperative Exchange, Inc. v. Tibe, Sr.* (33 SCRA 596-597 [1970]), the legality of the same resolutions, involving the same corporation as petitioner and another Board Member, who received the same allowances and benefits thereunder, under the same circumstances and set of facts as the case at bar, was resolved by this Court, holding that the questioned resolutions (Nos. 35, 52, 49, 57 and 87) are contrary to the By-Laws of the federation and, therefore, not within the power of the board of directors to enact. It will be noted that in interpreting the same Section 8 of the By-Laws likewise invoked in the previous case as in the case at bar, this Court held that the right of the stockholders to determine the compensation of the Board of Directors was explicitly reserved and even without said reservation, the directors are not entitled to compensation. Moreover, this Court declared that the law is well settled that directors of corporations presumptively serve without compensation so that while the directors, in assigning themselves additional duties acted within their power, they nonetheless acted in excess of their authority by voting for themselves compensation for such additional duties.

Laches was also ruled out by this Court in the same case the tribunal holding that the board of directors under the By-Laws of the Corporation, had the control of the affairs of the corporation and it is not to be expected that the board would sue its members to recover the sums of money voted by and for themselves. Thus, under the circumstances, where the corporation was virtually immobilized from commencing suit against its directors, laches does not begin to attach against the corporation until the directors cease to be such. (*Ibid.*, pp. 597-598).

In resume, almost all the issues raised in the case at bar have

already been resolved in *Central Cooperative Exchange, Inc. v. Tibe, Sr.* (*supra*) and there appears to be no logical reason why the ruling in said case which has long become final, should not apply to the instant case.

Concerning the point that the complaint was verified by the officer-in-charge who is not of the category of a General Manager, it will be noted that said officer-in-charge took over the functions and duties of the deposed general manager. In general, the authority to supervise the business and affairs of the corporation includes the authority to institute proceedings against all accountable persons in order to protect and preserve the assets of the corporation and to prevent their dissipation (*In re Winston*, 122 Fed. 187).

Even granting that the authority of the stockholders is necessary in the institution of the suit, the lack of authority was corrected by ratification or conformation of the stockholders as expressed in their resolution of May 25, 1962, when a meeting was held with the presence of a quorum (*Brief for Petitioner*, pp. 41-42).

PREMISES CONSIDERED, the decision under review is REVERSED and SET ASIDE, and another one is hereby rendered ordering the respondent to pay unto the petitioner the sum of P10,967.85 with legal interests from the date of the filing of the complaint until fully paid with costs against the respondent.

SO ORDERED

Yap, C.J. (Chairman), Melencio-Herrera, Padilla, and Sarmiento, JJ., concur.

[*] CA, Sixth Division, penned by Justice Andres Reyes, with the concurrence of Justices Salvador V- Esguerra and Luis B. Reyes.

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