

**MA. TERESITA C. CABALLES, AND VLADIMIR RUIDERA,
PETITIONERS, VS. DRS. PRIMITIVA PEREZ-SISON, LIGAYA D. PEREZ,
ANTONIO F. JOSON, JR., BOARD OF OPTOMETRY OF THE
PROFESSIONAL REGUL...**

G.R. No. 131759. March 23, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for certiorari under Rule 65 of the Rules of Court with application for preliminary injunction and/or temporary restraining order. The petitioners assail the dismissal of their petition in the Court of Appeals docketed as CA-G.R. SP No. 39494[1] as well as the appellate court's Resolution which dismissed their motion for reconsideration.

The facts as culled from the records are as follows:

On December 1, 1994, the Samahan ng Mga Optometrist sa Pilipinas (SOP), through its President, Charlie L. Ho, filed a Letter-Affidavit[2] with the Board of Optometry of the Professional Regulations Commission (PRC), charging Emma Emperado-Dreyfus, Ma. Teresita C. Caballes, Filemon P. Esquivel, Jr. and Vladimir L. Ruidera, all employees of Vision Express Philippines, Inc. (VEPI), with unethical and/or unprofessional conduct. Thus:

The undersigned, as President of the Samahan ng mga Optometrist sa Pilipinas (SOP), is writing in behalf of the association to bring to your attention and proper action possible violations of certain provisions of the Code of Ethics for Optometrists.

Under Section 3 (e), article III of the Code of Ethics for Optometrists, it is considered unethical and unprofessional conduct to "xxx (hold) oneself to the public as an optometrist under the name of any corporation, company, institution, clinic, association, parlor, or any other name than the name of the optometrist."

Applying said provision to the subject of this letter, please be informed that the following duly licensed optometrists

1. Emma Emperado-Dreyfus

PRC Lic. No. 4433

2. Ma. Teresita C. Caballes

PRC Lic. No. 4189

3. Filemon P. Esquivel, Jr.

PRC Lic. No. 5629

4. Vladimir L. Ruidera 1994

Board passer

may have possibly committed an infraction considering the following circumstances:

- They have been employed by a corporation named Vision Express Phils., Inc. since September 1994 up to the present;

- Vision Express Phils., Inc. is a corporation that has been charged with illegally engaging in the practice of optometry before the Securities and Exchange Commission under SEC PED Case No. 94-1732;

- Since they have been employed by the corporation, it is inevitable that they associate themselves with and represent themselves to the public as part of the corporation, thus, adopting the name of the corporation instead of their own in practicing their profession;

- By consenting to the present arrangement, and knowing that the corporation is engaging in activities solely reserved for optometrists, they have allowed themselves to be part of the corporation's illegal practice of optometry.[3]

The complaint was supported by affidavits executed by Charlie Ho,[4] Emelito Tecson,[5] and Digna Marcelo.[6] In his affidavit, Ho averred as follows:

- Sometime in September 1994, an establishment under the name of Vision Express (VEPI henceforth) opened at the 4th level-Annex-B Building of the SM Megamall in Mandaluyong.

- On or about October 1994, I personally visited the said establishment and was able to talk to Dr. Emma Emperado-Dreyfus, store manager, in connection with the optometrists employed by the corporation who render optometric services to the public, to wit:

1. Emma Emperado-Dreyfus

PRC Lic. No. 4433

2. Ma. Teresita C. Caballes

PRC Lic. No. 4189

3. Filemon P. Esquivel, Jr.

PRC Lic. No. 5629

4. Vladimir L. Ruidera 1994

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- On said occasion, it was admitted to me by said Dr. Dreyfus, but without disclosing their identities, that there are several optometrists employed by the corporation.

- As optometrists employed by the corporation, I saw Dr. Dreyfus and Dr. Esquivel in the establishment rendering services for the corporation in furtherance of the practice of optometry.

- There were also other individuals in the establishment performing eye examinations on patients with the use of an auto-refractor, whose identities are established by the affidavits of Emelito Tecson and Digna Marcelo, hereto attached as Annexes "A" and "B," respectively.[7]

The complaint was docketed as Adm. Case No. 157. The respondents therein submitted a Joint Counter-Affidavit[8] where they admitted being employees of VEPI, but denied that they were engaged in the practice of optometry. They alleged that Ho was guilty of unprofessional and unethical conduct, and prayed that he be stripped of his professional license as optometrist. They averred that the complaint was malicious and unfounded, and that Ho was moved by malice and bad faith in bringing forth the complaint. They likewise accused Ho of trying to perpetuate a monopoly of the optical shop business.

Ho submitted his Reply-Affidavit,[9] while the respondents therein submitted their Rejoinder-Affidavit.[10] Pre-trial then ensued. Thereafter, on August 14, 1995, Teresita Caballes and Valdimir Ruidera filed a Motion to Dismiss[11] the complaint for its failure to state a cause of action. The petitioners made the following averments:

- During the last hearing of the instant case on July 20, 1995, plaintiff admitted before this Honorable Commission that he did not see respondents Teresita Caballes and Vladimir Ruidera rendering services for the corporation in furtherance of the practice of optometry;

- The affidavits of plaintiff's witnesses Emil (sic) Tecson and Digna Marcelo do not indicate any participation of the respondents to the incidents set forth by the said witnesses; neither are the respondents identified in the said affidavits.

- Since plaintiff's complaint failed to set forth distinctly, clearly and concisely the charge or charges or the offense or offenses complained of against respondents Teresita Caballes and Vladimir Ruidera, they should be discharged as respondents and the cases against them be dismissed for failure to state a cause of action.[12]

The complainant Charlie Ho filed his opposition thereto.[13]

On September 26, 1995, the Board of Optometry issued an Order denying the motion to dismiss, thus:

Again, the Board of Optometry finds the motion to be without basis. The complainant has properly identified the respondents as employees in the Vision Corporation, a fact which they themselves admitted in their counter-affidavits. The only question now which is to be proven is, can they be held guilty for unethical and/or unprofessional conduct by the nature of their employment in said optical clinic?

IN VIEW OF THE FOREGOING, the Board of Optometry resolve[s] as it hereby resolves to:

- a) Order the respondents to answer the request for admission made by the complainant dated July 31, 1995.
- b) Deny the “Motion To Dismiss” filed by the respondents for lack of merit.[14]

The petitioners filed a motion for reconsideration[15] of the said order which was, however, also denied by the Board.[16] It ruled that a reading of the complaint-affidavit reveals that there was, indeed, a cause of action, as the petitioners were charged with alleged violation of Section 6(e) and (j) of Article III of the Code of Ethics of Optometrists. According to the Board, that the complaint-affidavit made no mention of the details as to how the unprofessional or undesirable conduct was committed would not justify the dismissal of the complaint. The Board stated that rules of procedure are not to be applied in a very rigid or technical sense.[17]

The petitioners, thereafter, filed a petition for certiorari with application for preliminary injunction and temporary restraining order with the Court of Appeals, urging the reversal of the questioned orders on the following grounds:

A. RESPONDENT BOARD ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT DENIED PETITIONERS’ MOTION TO DISMISS DESPITE THE FACT THAT THE COMPLAINT FILED AGAINST THEM PATENTLY FAILED TO STATE A CAUSE OF ACTION.

B. RESPONDENT BOARD ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT DENIED PETITIONERS’ MOTION FOR RECONSIDERATION FROM ITS SEPTEMBER 26, 1995 ORDER, CITING AS BASIS FOR ITS DENIAL THE INJURY TO THE COMPLAINANT WHEN THE LATTER DID NOT EVEN ALLEGE ANY INJURY SUFFERED BY IT ATTRIBUTABLE TO ANY ACT OF ANY OF THE PETITIONERS.

C. RESPONDENT BOARD ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN FROM ITS ORDERS DATED SEPTEMBER 26 AND DECEMBER 8, IT UNREASONABLY IMPLIED THAT PETITIONERS SHOULD BE BROUGHT TO TRIAL FOR SIMPLY BEING EMPLOYEES OF VEPI.

D. THERE IS NO APPEAL, NOR ANY PLAIN SPEEDY REMEDY IN THE ORDINARY COURSE OF LAW FROM THE AFOREMENTIONED ORDERS OF THE RESPONDENT BOARD EXCEPT THIS PETITION FOR CERTIORARI.[18]

The petition was dismissed for lack of merit. The Court of Appeals held that a defendant who moves to dismiss a complaint on the ground of failure to state a cause of action is deemed to have hypothetically admitted the allegations therein. Invoking the test of sufficiency, the CA held that the sole element furnishing the said test is usually the complaint itself, and no other. The absence of proof to substantiate an allegation in the complaint does not mean that the complaint is insufficient, only that it is unsupported by evidence. According to the CA, this could be the judgment of the Board in its decision after trial. At this stage, the Board could not be said to have acted with grave abuse of discretion in denying the petitioners’ motion to dismiss.

The appellate court also ruled that an order denying a motion to dismiss, being interlocutory in nature, cannot be the subject of a petition for certiorari under Rule 65. The remedy of the losing party in such case is to proceed to trial, and, in case an adverse decision is rendered, to appeal in due time, assigning the denial of the motion to dismiss as an error. The appellate court added that it would not preempt the Board of Optometry from deciding on the case.

Thus, the petitioners filed the instant petition for certiorari under Rule 65 of the Rules of Court with prayer for the issuance of a preliminary injunction and/or restraining order to enjoin the Board from further proceeding with the

case.

The petitioners allege that the Court of Appeals erred as follows:

- THE HONORABLE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT DISMISSED THE PETITION FOR CERTIORARI WHEN IT IS VERY CLEAR FROM THE QUESTIONED COMPLAINT THAT IT FAILED TO STATE A CAUSE OF ACTION.

- THE HONORABLE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT DENIED PETITIONERS' MOTION FOR RECONSIDERATION FROM ITS 09 JUNE 1997 DECISION IN A MINUTE RESOLUTION.

- THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN FINDING THAT AN ORDER DENYING A MOTION TO DISMISS CANNOT BE THE SUBJECT OF A PETITION FOR CERTIORARI UNDER RULE 65 CITING THE CASE OF ATIENZA VS. COURT OF APPEALS, G.R. No. 85455, 232 SCRA 737 (1994).[19]

According to the petitioners, in dismissing their petition for certiorari, the CA relied on the fact that they are employees of VEPI, on the presumption that it was engaged in the illegal practice of optometry. The petitioners note that the SEC upheld the legality of VEPI's right to engage in its business, and further upheld its right to engage the services of optometrists. The petitioners assert that a closer look at the complaint/affidavit would show that it failed to state a cause of action. Nothing in the said affidavit mentioned that the petitioners committed any act which would constitute unethical or professional conduct, and all that was mentioned was that they were employees of VEPI.

The petitioners contend that the averment of the law they allegedly violated, Sections 6(e) and (j) of Article III of the Code of Ethics for Optometrists, only appeared in a subsequent pleading. The complaint/affidavit did not mention that the petitioners held themselves out to the public as optometrists under the name of a corporation nor advertised and practiced under names other than their own. According to the petitioners, the failure to state the above facts in the complaint/affidavit itself is fatal, and such defect cannot be cured by alleging those facts in subsequent pleadings. The act or omission allegedly committed by the petitioners, the very heart of the complaint, was missing.

The petitioners maintain that there is no law which provides that mere employment in a corporation by an optometrist is prima facie evidence of illegal practice of optometry. The pronouncement made by the CA that it is up to the Board to decide whether to punish an optometrist by mere employment in a corporation would set a bad precedent, as it would imply that the Board has the authority to punish optometrists by the fact of mere employment in a corporation. Furthermore, the petitioners assert that the ruling of the CA is a bad precedent and is violative of the due process clause under Section 1, Article III of the 1987 Constitution. They likewise claim that they are entitled to the equal protection of laws, as there are a number of professionals who are also employees of other corporations, but who have not been charged with unethical or unprofessional conduct for simply being employees.

The petitioners contend that after the Board denied their motion for reconsideration, the plain, adequate and speedy remedy available to them was a petition for certiorari, and that in the interest of substantial justice, an order denying a motion to dismiss can be the subject of a petition for certiorari.

In their Comment, the private respondents aver that the petitioners should have availed themselves of the remedy of a petition for review under Rule 45 of the Rules of Civil Procedure. They likewise insist that a perusal of the complaint/affidavit of respondent Ho will reveal that the essential requisites of a cause of action are present. The objection raised in the motion to dismiss is premature, because the parties were only at the pre-trial stage. Moreover, according to the private respondents, the petitioners contradicted themselves when they averred that the complaint/affidavit had no cause of action, but, instead of immediately filing a motion to dismiss, they filed a joint counter-affidavit, which was actually an answer.

The petition is bereft of merit.

Rep. Act No. 8050[20] specifically vests in the Board of Optometry the power to conduct hearings and investigations to resolve complaints against practitioners of optometry for malpractice, unethical and unprofessional conduct, or violation of any of the provisions of the Act or any of its regulations[21] and authorizes the said Board to render a decision thereon as long as the vote of three (3) members is obtained.[22] Thus, the Board may, after giving proper notice and hearing to the party concerned, revoke an optometrist's certificate of registration or suspend his license to practice on the foregoing grounds, or upon the conviction of the optometrist of a crime involving moral turpitude.[23] The revocation of a certificate or suspension of a professional license by the Board shall become final, unless appealed to the PRC within fifteen (15) days from receipt of the decision.[24]

The petitioners' premature resort to the courts necessarily becomes fatal to their cause of action. It is presumed that an administrative agency, in this case, the Board of Optometry, if afforded an opportunity to pass upon a matter, would decide the same correctly, or correct any previous error committed in its forum. The thrust of the rule on exhaustion of administrative remedies is that the courts must allow the administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. Furthermore, reasons of law, comity and convenience prevent the courts from entertaining cases proper for determination by administrative agencies.[25]

We note that the petition stems from an order denying the petitioner's motion to dismiss. It must be stressed that such order is merely an interlocutory one and therefore not appealable. Neither can it be the subject of a petition for certiorari. Such order may only be reviewed in the ordinary course of law by an appeal from the judgment after trial. Although the special civil action for certiorari may be availed of in case there is grave abuse of discretion or lack of jurisdiction on the part of the lower court, or body,[26] it would be a breach of orderly procedure to allow a party to come before the appellate court every time an order is issued with which a party does not agree.[27] Hence, as a general rule, there must first be a judgment on the merits of the case before it may be questioned via a special civil action for certiorari. Thus:

The remedy of the aggrieved party is to file an answer to the complaint and to interpose as defenses the objections raised in his motion to dismiss, proceed to trial, and in case of an adverse decision, to elevate the entire case by appeal in due course. However, the rule is not ironclad. Under certain situations, recourse to certiorari or mandamus is considered appropriate, that is, (a) when the trial court issued the order without or in excess of jurisdiction; (b) where there is patent grave abuse of discretion by the trial court; or, (c) appeal would not prove to be a speedy and adequate remedy as when an appeal would not promptly relieve a defendant from the injurious effects of the patently mistaken order maintaining the plaintiffs' baseless action and compelling the defendant needlessly to go through protracted trial and clogging the court dockets by another futile case.[28]

The petitioners failed to show that the instant case falls under any of the recognized exceptions to the rule.

Furthermore, they failed to show that the respondent Board committed a grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed orders.

IN VIEW WHEREOF, the petition is DISMISSED for lack of merit. The Decision of the Court of Appeals in CA-G.R. SP No. 39494 and its Resolution dated October 22, 1997 are AFFIRMED in toto.

SO ORDERED.

Quisumbing, (Acting Chairman), Austria-Martinez, and Tinga, JJ., concur.

Puno, (Chairman), J., on leave.

[1] Penned by Associate Justice Hector L. Hofileña with Associate Justices Artemon D. Luna and Artemio G. Tuquero concurring.

[2] Annex “1,” Rollo, pp. 186-187.

[3] See Note 2.

[4] Annex “C,” Rollo, pp. 39-40.

[5] Annex “D,” Id. at 41-44.

[6] Annex “E,” Id. at 45-48.

[7] Supra, at note 4.

[8] Annex “E,” Id. at 53-59.

[9] Annex “G,” Id. at 60-63.

[10] Annex “H,” Id. at 64-67.

[11] Annex “L,” Id. at 100-102.

[12] Id. at 100-101.

[13] Annex “M,” Rollo, pp. 103-105.

[14] Rollo, p. 107.

[15] Annex “O,” Rollo, pp. 108-112.

[16] Annex “Q,” Id. at 116-117.

[17] Id. at 117.

[18] Rollo, p. 130.

[19] Rollo, p. 17.

[20] Otherwise known as The Revised Optometry Law of 1995.

[21] Section 12(j).

[22] Section 14.

[23] Section 26.

[24] Section 27.

[25] Gonzales v. Court of Appeals, 357 SCRA 599 (2001)

[26] Bangko Silangan Development Bank v. Court of Appeals, 360 SCRA 322 (2001).

[27] Datuin v. Court of Appeals, 118 SCRA 54 (1982).

[28] Emergency Loan Pawnshop Incorporated v. Court of Appeals, 353 SCRA 89 (2001).

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