COMMISSIONER RUFUS B. RODRIGUEZ AND ASSOCIATE COMMISSIONER ALAN ROULLO YAP OF THE BUREAU OF IMMIGRATION, PETITIONERS, VS. SAMUEL A. JARDIN, RESPONDENT.

G.R. NO. 141834. July 30, 2007

Ponente: CORONA, J.

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CORONA, J.:

This petition for review on certiorari[2] seeks to set aside the decision of the Court of Appeals (CA) in CA-G.R. SP No. 54465[3] and its resolution denying reconsideration.

In the evening of May 8, 1999, Edgardo D. Cabrrera, Gerardo R. Gorrospe and Dorotea T. Hiyas, intelligence agents of the Bureau of Immigration (BI), saw respondent Samuel A. Jardin, chief of the BI's Law and Intelligence Division, with three unidentified male companions, including a Japanese national who arrived on board a flight from Osaka, Japan, at the arrival area of the Ninoy Aquino International Airport (NAIA). Cabrrera noticed that the Japanese national's fifth finger on the left hand was missing. This aroused his suspicion, mutilation being a common practice among members of the Yakuza.[4] Hence, the BI agents closely watched respondent and his companions.

After identifying the Japanese national as Mizutani Ryoichiro, an alien declared undesirable in 1999 and prohibited from entering the Philippines,[5] they immediately apprehended him and sent him back to Japan pursuant to an exclusion order.[6]

The following day, the BI agents filed a spot report[7] (relating the previous night's incident) with the chief of intelligence of the BI stationed in NAIA. Acting immigration officer Jude C. Hinolan, in his memorandum,[8] confirmed the spot report and relayed the service of the exclusion order on the airline and the consequent deportation of Ryoichiro.

On May 14, 1999, petitioner Rufus Rodriguez, immigration commissioner at that time, ordered associate commissioner Ma. Luisa Ylagan-Cortez to investigate the allegations contained in the spot report of the agents and Hinolan's memorandum.[9] Accordingly, Ylagan-Cortez ordered respondent to file his sworn explanation.[10]

Respondent denied the allegations against him.[11] He averred that his relatives requested his assistance in welcoming a niece's fiancé, Mizutani Ryoichiro.[12] Although he was aware that a Mizutani Ryoichiro had been declared an undesirable alien, he was informed that the blacklisted Ryoichiro was born in 1988[13] while his niece told him that her fiancé was in his fifties.[14] Furthermore, respondent reasoned that the accusations against Ryoichiro were unfounded because neither a conviction nor a police report linking Ryoichiro to the Yakuza was ever presented.[15]

On June 4, 1999, Ylagan-Cortez, as acting immigration commissioner,[16] ordered the preventive suspension of respondent for 90 days.[17] The administrative case against respondent was then referred to petitioner Alan

Roullo Yap, an associate commissioner at that time, for formal investigation and reception of evidence.[18] Respondent moved for the suspension of proceedings and reconsideration[19] but petitioner Yap denied his motion.[20]

On July 8, 1999, respondent sought the review of the June 4, 1999 order by the Secretary of Justice.[21]

Despite the lapse of his preventive suspension on September 4, 1999 and pending the resolution of his appeal with the Secretary of Justice, respondent filed a special civil action for certiorari[22] with the CA, assailing the June 4, 1999 order. On November 19, 1999, the appellate court nullified the order and directed petitioners to reinstate respondent to his position.[23] Petitioners' motion for reconsideration was denied.[24]

On February 21, 2000, petitioners in their official capacities filed this appeal.[25] They contended that the CA erred in granting respondent's petition for certiorari and in annulling the June 4, 1999 order.[26]

On June 15, 2002, respondent moved to declare the petition moot. He averred that petitioner Rodriguez had in the meantime been replaced by Andrea D. Domingo as immigration commissioner while petitioner Yap had been appointed to the Office of the Government Corporate Counsel.[27] Despite the lapse of 30 days, no substitution was effected pursuant to Section 17, Rule 3 of the Rules of Court which provides:

> Sec. 17. Death or separation of a party who is a public officer. — When a public officer is a party in an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by or against his successor if within thirty (30) days after the successor takes office or such time as may be granted by the court, it is satisfactorily shown to the court by any party that there is a substantial need for continuing or maintaining it and that the successor adopts or continues or threatens to continue or adopt the action of his predecessor. Before a substitution is made, the party or officer affected, unless expressly assenting thereto, shall be given reasonable notice of the application therefor and accorded an opportunity to be heard.

On April 30, 2003, the Office of the Solicitor General (OSG) manifested that Andrea D. Domingo had indeed been appointed the new immigration commissioner replacing petitioner Rodriguez. The OSG also stated that Commissioner Domingo was not adopting the position of her predecessor, petitioner Rodriguez.[28]

Despite serious misgivings, we agree with respondent but purely on technicality.

Well-settled is the rule that failure to make a substitution pursuant to Section 17, Rule 3 of the Rules of Court is a ground for the dismissal of an action.[29] For the valid substitution of a public officer who has sued or has been sued in his or her official capacity, the following requisites must be satisfied:

- satisfactory proof by any party that there is substantial need for continuing or maintaining the action;

- the successor adopts or continues or threatens to adopt or continue the acts of his or her predecessor;

- the substitution must be effected within 30 days after the successor assumes office or within the time granted by the court; and,

- notice of the application to the other party.

Here, petitioner Rodriguez's successor categorically expressed her lack of interest in pursuing this appeal, hence, the failure to effect a substitution.
WHEREFORE, the petition is hereby DENIED.

No costs.

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SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

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[1] The records also refer to respondent as Samuel A.M. Jardin.

[2] Under Rule 45 of the Rules of Court.

[3] Penned by Associate Justice Artemio G. Tuquero (retired) and concurred in by Associate Justices Eubolo G. Verzola (deceased) and Elvi John S. Asuncion (dismissed from service) of the Eleventh Division of the Court of Appeals, dated November 19, 1999. Rollo, pp. 28-36.

[4] Id., p. 39.

[5] Id., pp. 39-40, 42-43.

[6] BI exclusion order dated May 8, 1999. Id., p. 41.

[7] Id., pp. 39-40.

[8] Id., pp. 42-43.

[9] Id., p. 44.

[10] Id., p. 45.

[11] Memorandum of Samuel A.M. Jardin and the supporting affidavit of Godofredo C. Cabello. Id., pp. 46-50.

[12] Id., pp. 30, 46.

[13] Id., p. 30.

[14] Id., p. 46.

[15] Id., p. 48.

[16] BI Personnel Order No. 303 dated June 3, 1999. Commissioner Rodriguez designated associate commissioner Ylagan-Cortez as acting commissioner on June 4 to 5, 1999. Id., p. 51.

[17] Order dated June 4, 1999 and amended June 5, 1999. Id., pp. 52-59.

[18] Id., pp. 56-59.

[19] Motion to suspend proceedings dated July 16, 1999. Id., pp. 76-77.

[20] Id., pp. 63-64.

[21] Petition for review (filed before the Secretary of Justice). Id., pp. 60-72.

[22] Id., pp. 80-98.

[23] Id., p. 36.

[24] Id., p. 38.

[25] Under Rule 45 of the Rules of Court. Id., p. 25.

[26] Id., pp. 10-25.

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[27] Id., pp. 163-165.

[28] Id., pp. 104, 129-130.

[29] Roque, et al. v. Delgado, et al., 95 Phil. 723, 726 (1954). See also Heirs of Mayor Galvez v. Court of Appeals, G.R. No. 119193, 29 March 1996, 255 SCRA 672, 686-687.

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