

VALLE VERDE COUNTRY CLUB, INC., ERNESTO VILLALUNA, RAY GAMBOA, AMADO M. SANTIAGO, JR., FORTUNATO DEE, AUGUSTO SUNICO, VICTOR SALTA, FRANCISCO ORTIGAS III, ERIC ROXAS, IN THEIR C...

G.R. No. 151969. September 04, 2009

Ponente: BRION, J.

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BRION, J.:

In this petition for review on certiorari,[1] the parties raise a legal question on corporate governance: Can the members of a corporation's board of directors elect another director to fill in a vacancy caused by the resignation of a hold-over director?

THE FACTUAL ANTECEDENTS

On February 27, 1996, during the Annual Stockholders' Meeting of petitioner Valle Verde Country Club, Inc. (VVCC), the following were elected as members of the VVCC Board of Directors: Ernesto Villaluna, Jaime C. Dinglasan (Dinglasan), Eduardo Makalintal (Makalintal), Francisco Ortigas III, Victor Salta, Amado M. Santiago, Jr., Fortunato Dee, Augusto Sunico, and Ray Gamboa.[2] In the years 1997, 1998, 1999, 2000, and 2001, however, the requisite quorum for the holding of the stockholders' meeting could not be obtained. Consequently, the above-named directors continued to serve in the VVCC Board in a hold-over capacity.

On September 1, 1998, Dinglasan resigned from his position as member of the VVCC Board. In a meeting held on October 6, 1998, the remaining directors, still constituting a quorum of VVCC's nine-member board, elected Eric Roxas (Roxas) to fill in the vacancy created by the resignation of Dinglasan.

A year later, or on November 10, 1998, Makalintal also resigned as member of the VVCC Board. He was replaced by Jose Ramirez (Ramirez), who was elected by the remaining members of the VVCC Board on March 6, 2001.

Respondent Africa (Africa), a member of VVCC, questioned the election of Roxas and Ramirez as members of the VVCC Board with the Securities and Exchange Commission (SEC) and the Regional Trial Court (RTC), respectively. The SEC case questioning the validity of Roxas' appointment was docketed as SEC Case No. 01-99-6177. The RTC case questioning the validity of Ramirez' appointment was docketed as Civil Case No. 68726.

In his nullification complaint[3] before the RTC, Africa alleged that the election of Roxas was contrary to Section 29, in relation to Section 23, of the Corporation Code of the Philippines (Corporation Code). These provisions read:

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.

x x x x

Sec. 29. Vacancies in the office of director or trustee. - Any vacancy occurring in the board of directors or trustees other than by removal by the stockholders or members or by expiration of term, may be filled by the vote of at least a majority of the remaining directors or trustees, if still constituting a quorum; otherwise, said vacancies must be filled by the stockholders in a regular or special meeting called for that purpose. A director or trustee so elected to fill a vacancy shall be elected only for the unexpired term of his predecessor in office.
xxx. [Emphasis supplied.]

Africa claimed that a year after Makalintal's election as member of the VVCC Board in 1996, his [Makalintal's] term - as well as those of the other members of the VVCC Board - should be considered to have already expired. Thus, according to Africa, the resulting vacancy should have been filled by the stockholders in a regular or special meeting called for that purpose, and not by the remaining members of the VVCC Board, as was done in this case.

Africa additionally contends that for the members to exercise the authority to fill in vacancies in the board of directors, Section 29 requires, among others, that there should be an unexpired term during which the successor-member shall serve. Since Makalintal's term had already expired with the lapse of the one-year term provided in Section 23, there is no more "unexpired term" during which Ramirez could serve.

Through a partial decision[4] promulgated on January 23, 2002, the RTC ruled in favor of Africa and declared the election of Ramirez, as Makalintal's replacement, to the VVCC Board as null and void.

Incidentally, the SEC issued a similar ruling on June 3, 2003, nullifying the election of Roxas as member of the VVCC Board, vice hold-over director Dinglasan. While VVCC manifested its intent to appeal from the SEC's ruling, no petition was actually filed with the Court of Appeals; thus, the appellate court considered the case closed and terminated and the SEC's ruling final and executory.[5]

THE PETITION

VVCC now appeals to the Court to assail the RTC's January 23, 2002 partial decision for being contrary to law and jurisprudence. VVCC made a direct resort to the Court via a petition for review on certiorari, claiming that the sole issue in the present case involves a purely legal question.

As framed by VVCC, the issue for resolution is whether the remaining directors of the corporation's Board, still constituting a quorum, can elect another director to fill in a vacancy caused by the resignation of a hold-over director.

Citing law and jurisprudence, VVCC posits that the power to fill in a vacancy created by the resignation of a hold-over director is expressly granted to the remaining members of the corporation's board of directors.

Under the above-quoted Section 29 of the Corporation Code, a vacancy occurring in the board of directors caused by the expiration of a member's term shall be filled by the corporation's stockholders. Correlating Section 29 with Section 23 of the same law, VVCC alleges that a member's term shall be for one year and until his successor is elected and qualified; otherwise stated, a member's term expires only when his successor to the Board is elected and qualified. Thus, "until such time as [a successor is] elected or qualified in an annual election where a quorum is present," VVCC contends that "the term of [a member] of the board of directors has yet not expired."

As the vacancy in this case was caused by Makalintal's resignation, not by the expiration of his term, VVCC

insists that the board rightfully appointed Ramirez to fill in the vacancy.

In support of its arguments, VVCC cites the Court's ruling in the 1927 El Hogar[6] case which states:

Owing to the failure of a quorum at most of the general meetings since the respondent has been in existence, it has been the practice of the directors to fill in vacancies in the directorate by choosing suitable persons from among the stockholders. This custom finds its sanction in Article 71 of the By-Laws, which reads as follows:

Art. 71. The directors shall elect from among the shareholders members to fill the vacancies that may occur in the board of directors until the election at the general meeting.

XXXX

Upon failure of a quorum at any annual meeting the directorate naturally holds over and continues to function until another directorate is chosen and qualified. Unless the law or the charter of a corporation expressly provides that an office shall become vacant at the expiration of the term of office for which the officer was elected, the general rule is to allow the officer to hold over until his successor is duly qualified. Mere failure of a corporation to elect officers does not terminate the terms of existing officers nor dissolve the corporation. The doctrine above stated finds expression in article 66 of the by-laws of the respondent which declares in so many words that directors shall hold office "for the term of one year or until their successors shall have been elected and taken possession of their offices." xxx.

It results that the practice of the directorate of filling vacancies by the action of the directors themselves is valid. Nor can any exception be taken to the personality of the individuals chosen by the directors to fill vacancies in the body. [Emphasis supplied.]

Africa, in opposing VVCC's contentions, raises the same arguments that he did before the trial court.

THE COURT'S RULING

We are not persuaded by VVCC's arguments and, thus, find its petition unmeritorious.

To repeat, the issue for the Court to resolve is whether the remaining directors of a corporation's Board, still constituting a quorum, can elect another director to fill in a vacancy caused by the resignation of a hold-over director. The resolution of this legal issue is significantly hinged on the determination of what constitutes a director's term of office.

The holdover period is not part
of the term of office of a member
of the board of directors

The word "term" has acquired a definite meaning in jurisprudence. In several cases, we have defined "term" as the time during which the officer may claim to hold the office as of right, and fixes the interval after which the several incumbents shall succeed one another.[7] The term of office is not affected by the holdover.[8] The term is fixed by statute and it does not change simply because the office may have become vacant, nor because the incumbent holds over in office beyond the end of the term due to the fact that a successor has not been elected and has failed to qualify.

Term is distinguished from tenure in that an officer's "tenure" represents the term during which the incumbent actually holds office. The tenure may be shorter (or, in case of holdover, longer) than the term for reasons within or beyond the power of the incumbent.

Based on the above discussion, when Section 23[9] of the Corporation Code declares that "the board of directors...shall hold office for one (1) year until their successors are elected and qualified," we construe the provision to mean that the term of the members of the board of directors shall be only for one year; their term expires one year after election to the office. The holdover period - that time from the lapse of one year from a member's election to the Board and until his successor's election and qualification - is not part of the director's original term of office, nor is it a new term; the holdover period, however, constitutes part of his tenure. Corollary, when an incumbent member of the board of directors continues to serve in a holdover capacity, it implies that the office has a fixed term, which has expired, and the incumbent is holding the succeeding term.[10]

After the lapse of one year from his election as member of the VVCC Board in 1996, Makalintal's term of office is deemed to have already expired. That he continued to serve in the VVCC Board in a holdover capacity cannot be considered as extending his term. To be precise, Makalintal's term of office began in 1996 and expired in 1997, but, by virtue of the holdover doctrine in Section 23 of the Corporation Code, he continued to hold office until his resignation on November 10, 1998. This holdover period, however, is not to be considered as part of his term, which, as declared, had already expired.

With the expiration of Makalintal's term of office, a vacancy resulted which, by the terms of Section 29[11] of the Corporation Code, must be filled by the stockholders of VVCC in a regular or special meeting called for the purpose. To assume - as VVCC does - that the vacancy is caused by Makalintal's resignation in 1998, not by the expiration of his term in 1997, is both illogical and unreasonable. His resignation as a holdover director did not change the nature of the vacancy; the vacancy due to the expiration of Makalintal's term had been created long before his resignation.

The powers of the corporation's
board of directors emanate
from its stockholders

VVCC's construction of Section 29 of the Corporation Code on the authority to fill up vacancies in the board of directors, in relation to Section 23 thereof, effectively weakens the stockholders' power to participate in the corporate governance by electing their representatives to the board of directors. The board of directors is the directing and controlling body of the corporation. It is a creation of the stockholders and derives its power to control and direct the affairs of the corporation from them. The board of directors, in drawing to themselves the powers of the corporation, occupies a position of trusteeship in relation to the stockholders, in the sense that the board should exercise not only care and diligence, but utmost good faith in the management of corporate affairs.[12]

The underlying policy of the Corporation Code is that the business and affairs of a corporation must be governed by a board of directors whose members have stood for election, and who have actually been elected by the stockholders, on an annual basis. Only in that way can the directors' continued accountability to shareholders, and the legitimacy of their decisions that bind the corporation's stockholders, be assured. The shareholder vote is critical to the theory that legitimizes the exercise of power by the directors or officers over properties that they do not own.[13]

This theory of delegated power of the board of directors similarly explains why, under Section 29 of the Corporation Code, in cases where the vacancy in the corporation's board of directors is caused not by the expiration of a member's term, the successor "so elected to fill in a vacancy shall be elected only for the unexpired term of the his predecessor in office." The law has authorized the remaining members of the board to fill in a vacancy only in specified instances, so as not to retard or impair the corporation's operations; yet, in recognition

of the stockholders' right to elect the members of the board, it limited the period during which the successor shall serve only to the "unexpired term of his predecessor in office."

While the Court in *El Hogar* approved of the practice of the directors to fill vacancies in the directorate, we point out that this ruling was made before the present Corporation Code was enacted[14] and before its Section 29 limited the instances when the remaining directors can fill in vacancies in the board, i.e., when the remaining directors still constitute a quorum and when the vacancy is caused for reasons other than by removal by the stockholders or by expiration of the term.

It also bears noting that the vacancy referred to in Section 29 contemplates a vacancy occurring within the director's term of office. When a vacancy is created by the expiration of a term, logically, there is no more unexpired term to speak of. Hence, Section 29 declares that it shall be the corporation's stockholders who shall possess the authority to fill in a vacancy caused by the expiration of a member's term.

As correctly pointed out by the RTC, when remaining members of the VVCC Board elected Ramirez to replace Makalintal, there was no more unexpired term to speak of, as Makalintal's one-year term had already expired. Pursuant to law, the authority to fill in the vacancy caused by Makalintal's leaving lies with the VVCC's stockholders, not the remaining members of its board of directors.

WHEREFORE, we DENY the petitioners' petition for review on certiorari, and AFFIRM the partial decision of the Regional Trial Court, Branch 152, Manila, promulgated on January 23, 2002, in Civil Case No. 68726. Costs against the petitioners.

SO ORDERED.

Quisumbing, (Chairperson), Carpio-Morales, Del Castillo, and Abad, JJ., concur.

[1] Filed under Rule 45 of the Rules of Court; rollo, pp. 11-23.

[2] Also co-petitioners of VVCC in the present petition.

[3] Africa's complaint before the RTC was denominated as "Nullification of the 'Election' of a 'New Regular/Hold-Over (?) Director' and Damages"; rollo, pp. 31-46.

[4] *Id.*, pp. 28-30.

[5] CA Resolution dated August 27, 2003; *id.*, p. 124.

[6] *Government of the Philippine Islands v. El Hogar Filipino*, 50 Phil. 399 (1927).

[7] See *Topacio Nueno v. Angeles*, 76 Phil. 12, 21-22 (1946); *Alba v. Evangelista*, 100 Phil. 683, 694 (1957); *Paredes v. Abad*, 155 Phil. 494 (1974); *Aparri v. Court of Appeals*, No. L-30057, January 31, 1984, 127 SCRA 231.

[8] *Gaminde v. Commission on Audit*, G.R. No. 140335, December 13, 2000, 347 SCRA 655.

[9] The full text of which reads:

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.

Every director must own at least one (1) share of the capital stock of the corporation of which he is a director, which share shall stand in his name on the books of the corporation. Any director who ceases to be the owner of at least one (1) share of the capital stock of the corporation of which he is a director shall thereby cease to be a director. Trustees of non-stock corporations must be members thereof. A majority of the directors or trustees of all corporations organized under this Code must be residents of the Philippines.

[10] Words & Phrases, Vol. 19, p. 576.

[11] The full text of which reads:

Sec. 29. Vacancies in the office of director or trustee. - Any vacancy occurring in the board of directors or trustees other than by removal by the stockholders or members or by expiration of term, may be filled by the vote of at least a majority of the remaining directors or trustees, if still constituting a quorum; otherwise, said vacancies must be filled by the stockholders in a regular or special meeting called for that purpose. A director or trustee so elected to fill a vacancy shall be elected only for the unexpired term of his predecessor in office.

A directorship or trusteeship to be filled by reason of an increase in the number of directors or trustees shall be filled only by an election at a regular or at a special meeting of stockholders or members duly called for the purpose, or in the same meeting authorizing the increase of directors or trustees if so stated in the notice of the meeting.

[12] *Legarda v. La Previsora Filipina*, 66 Phil. 173 (1938), citing *Angeles v. Santos*, 64 Phil. 697 (1937).

[13] *Comac Partners, L.P., et al., v. Ghaznavi, et al.*, Del. Ch., 793 A.2d 372 (2001), citing *Bentas v. Haseotes*, Del. Ch., 769 A.2d 70, 76 (2000) and *Blasius Indus., Inc. v. Atlas Corp.*, Del. Ch., 564 A.2d 651, 659 (1988).

[14] The Corporation Code or Batas Pambansa Blg. 68 was enacted on May 1, 1980.

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