

**CELSO F. PASCUAL, SR. AND SERAFIN TERCENCIO, PETITIONERS, VS. CANIOGAN CREDIT AND DEVELOPMENT COOPERATIVE, REPRESENTED BY ITS CHAIRMAN OF THE BOARD, JOSE ANTONIO R. LEE, ATTY. VE...**

*G.R. No. 172980. July 22, 2015*

Ponente: LEONEN, J.

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**LEONEN, J.:**

An appeal of the outright dismissal of a petition for certiorari against an interlocutory order of a lower court becomes moot and academic where, during its pendency, judgment on the merits has been rendered in the main case and has become final and executory. An intra-cooperative dispute between two officers on one hand and the Board of Directors on the other falls within the jurisdiction of the regular courts, not of the Labor Arbiter.

Before this court is a Petition for Review on Certiorari[1] dated June 23, 2006 filed under Rule 45. The Petition seeks to reverse the Resolutions dated April 7, 2006[2] and May 30, 2006[3] of the Court of Appeals in CA-G.R. SP No. 93621, which dismissed outright petitioners' Petition for Certiorari with prayer for issuance of a temporary restraining order and/or writ of preliminary injunction for being premature and denied its motion for reconsideration, respectively.

Petitioners Celso F. Pascual, Sr. (Pascual) and Serafin Terencio (Terencio) were appointed by the former Board of Directors of Caniogan Credit and Development Cooperative (CCDC) to act as the cooperative's General Manager and Collection Manager, respectively, from start of operations until they reach the compulsory age of retirement of 65.[4]

Despite their retirement on January 9, 1997 and on March 2003, Pascual continued to serve as General Manager and Terencio as Collection Manager of CCDC.[5]

On August 13, 2005, the Board of Directors of CCDC passed Resolution Nos. 05-08-127[6] and 05-08-128,[7] terminating Pascual's and Terencio's services and declaring that they should serve only until September 30, 2005 and October 15, 2005, respectively. Despite the lapse of these periods given, Pascual and Terencio refused to vacate their positions.[8]

On November 29, 2005, CCDC and Atty. Venancio Reyes, Jr., the newly appointed General Manager, filed a Complaint for Injunction with prayer for issuance of writ of preliminary injunction and/or temporary restraining order[9] before the Regional Trial Court of Malolos, Bulacan. The Complaint was raffled to Branch 12.[10]

On December 1, 2005, the Regional Trial Court issued a temporary restraining order enjoining Pascual and Terencio for a period of 20 days from performing the functions of their offices.[11]

On December 7, 2005, Pascual and Terencio filed a Motion to Dismiss with prayer to defer all proceedings.[12] They questioned the Regional Trial Court's jurisdiction because the case allegedly involves a labor dispute in the

guise of an injunction.

On December 8, 2005, CCDC filed an Ex Parte Motion[13] to drop Atty. Venancio Reyes, Jr. as party plaintiff and a Motion for Leave to Intervene[14] and to admit the attached complaint-in-intervention of Nestor P. Tinio as the newly appointed Acting General Manager in place of Atty. Venancio Reyes, Jr.

At the hearing of the Motion to Dismiss on December 15, 2005, counsel for both parties requested that they be allowed to file their respective oppositions or comments on the Motions filed. It was then agreed in open court that the running of the 20-day period of the temporary restraining order would be interrupted and continued only upon resolution of the Motion to Dismiss. The court also declared that the Motion to Dismiss should be considered submitted for resolution upon simultaneous filing of the parties of their respective memoranda.[15]

The parties filed their memoranda and their respective oppositions/comments to the other motions filed.

On January 5, 2006, Pascual and Terencio also filed a Very Urgent Manifestation with prayer for the immediate lifting of the temporary restraining order,[16] alleging that the continued implementation of the order would not help CCDC but would cause its further degradation and deterioration.

On January 10, 2006, finding that the case involves a dispute between the Board of Directors and officers of CCDC, the Regional Trial Court issued the Order[17] referring the case and all its records to the Clerk of Court of the Regional Trial Court of Bulacan for re-raffle to branches specifically assigned to hear and decide intra-corporate disputes.

Allegedly without notice to Pascual and Terencio, the case was re-raffled to Branch 79, and an order was issued in open court during the hearing on January 30, 2006 to the effect that pending incidents were deemed submitted for resolution.[18]

However, Branch 79 issued another Order[19] dated February 10, 2006 returning the case to Branch 12. It reasoned that the case is not an intra-corporate dispute but an intra-cooperative one.

On March 3, 2006, Branch 12 of the Regional Trial Court issued the Order[20] denying the Motion to Dismiss for lack of merit because the case involves an intra-cooperative dispute. However, both the Ex Parte Motion to drop Atty. Venancio Reyes, Jr. as plaintiff and the Motion for Leave to Intervene were granted. Finally, the trial court deferred action on Pascual and Terencio's Very Urgent Motion to lift the temporary restraining order.

Pascual and Terencio challenged the March 3, 2006 Order before the Court of Appeals through a Petition for Certiorari[21] with prayer for an issuance of a temporary restraining order and/or writ of preliminary injunction and lifting of the temporary restraining order issued against them.

The Petition was dismissed by the Court of Appeals Ninth Division in its Resolution[22] dated April 7, 2006, which held that it was premature because: (1) petitioners did not file a motion for reconsideration of the impugned Regional Trial Court Order; and (2) the case involved an intra-cooperative dispute, and there was no showing that prior recourse to the modes of settlement required in Article 121 of Republic Act No. 6938[23] and Section 8 of Republic Act No. 6939[24] were resorted to before seeking judicial relief and intervention.

Pascual and Terencio filed a Motion for Reconsideration, but it was likewise denied by the Court of Appeals in its Resolution[25] dated May 30, 2006.

Hence, this Petition[26] was filed, anchored on the following issues:

First, whether the Court of Appeals gravely erred in dismissing outright petitioners Celso F. Pascual, Sr. and Serafin Terencio's Rule 65 Petition on the ground of prematurity; and

Second, whether the case is one of illegal dismissal of an employee which is subject to the exclusive jurisdiction of the Labor Arbiter or of the National Labor Relations Commission, not the trial court.

At the outset, this case had become moot and academic with the finality of the judgment by default,[27] rendered on July 20, 2006 by Branch 12 of the Regional Trial Court of Malolos, Bulacan.[28] The judgment permanently enjoined petitioners from assuming the positions of General Manager and Collection Manager of respondent CCDC and ordered them to pay it, jointly and severally, the sum of P50,000.00 as attorney's fees and the costs of suit.

Nonetheless, even on the merits, the Petition must be denied.

The general rule is that a motion for reconsideration is indispensable before resort to the special civil action for certiorari is made. This is to afford the court or tribunal the opportunity to correct its error, if any.[29] An omission to comply with this procedural requirement justifies a denial of the writ of certiorari applied for.[30]

We find no exceptional circumstance[31] to justify petitioners' omission to file a motion for reconsideration. Their allegation that the trial court was unable to resolve their many motions for a long time is belied by the facts on record. Their Motions to Dismiss and to lift the temporary restraining order were submitted for resolution on January 30, 2006. On March 3, 2006, a little over one month later, the trial court issued its impugned order. To our mind, this period of time does not constitute undue delay on the part of the trial court in resolving the motions.

Furthermore, contrary to petitioners' allegations, we find no "extreme necessity and urgency" to excuse their direct resort to a certiorari before the Court of Appeals. Hence, the Court of Appeals correctly dismissed petitioners' Rule 65 Petition.

However, we disagree with the Court of Appeals' observation that prior recourse to the modes of settlement under Article 121 of Republic Act No. 6938[32] and Section 8 of Republic Act No. 6939[33] should have been made before seeking judicial relief. As pointed out by petitioners, it is clear from the Complaint filed by respondents before the trial court that the dispute was, indeed, referred to the Regional Office of the Cooperative Development Authority for mediation and arbitration. However, despite its earnest efforts, no settlement was reached between the parties, thus prompting the Authority to issue a certificate of non-resolution.

As regards the issue on jurisdiction, this court finds no reversible error in the Court of Appeals' ruling that the case involves an intra-cooperative dispute which falls within the jurisdiction of the regular courts. There is evidently no employment relationship between the parties.

In *Tabang v. NLRC*: [34]

[A]n "office" is created by the charter of the corporation and the officer is elected by the directors or stockholders. On the other hand, an "employee" usually occupies no office and generally is employed not by action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee.[35]

Here, petitioners were officers of respondent CCDC. They were appointed directly by the former Board of Directors according to the by-laws of respondent CCDC, and their salaries were likewise set by the same Board.[36] Petitioners do not refute this fact. Their termination or removal is clearly an intra-cooperative matter.[37] It involves a dispute within the cooperative between two officers on one hand and the Board of Directors on the other.

Petitioners clarify that they do not take issue on the power of the Board of Directors to remove them. Rather, they dispute the "manner, cause[,] and legality" of their removal from their respective offices as General Manager and

Collection Manager.[38] Even so, we hold that an officer's dismissal is a matter that comes with the conduct and management of the affairs of a cooperative and/or an intra-cooperative controversy, and that nature is not altered by reason or wisdom that the Board of Directors may have in taking such action. Accordingly, the case a quo is not a labor dispute requiring the expertise of the Labor Arbiter or of the National Labor Relations Commission. It is an intra-cooperative dispute that is within the jurisdiction of the Regional Trial Court, pursuant to Section 121 of Republic Act No. 6938, which expressly provides:

ARTICLE 121. Settlement of Disputes. — Disputes among members, officers, directors, and committee members, and intra-cooperative disputes shall, as far as practicable, be settled amicably in accordance with the conciliation or mediation mechanisms embodied in the by-laws of the cooperative, and in applicable laws.

Should such a conciliation/mediation proceeding fail, the matter shall be settled in a court of competent jurisdiction. (Emphasis supplied)

Likewise, Section 8 of Republic Act No. 6939 provides:

SECTION 8. Mediation and Conciliation. — Upon request of either or both parties, the Authority shall mediate and conciliate disputes within a cooperative or between cooperatives: Provided, That if no mediation or conciliation succeeds within three (3) months from request thereof, a certificate of non-resolution shall be issued by the commission prior to the filing of appropriate action before the proper courts. (Emphasis supplied)

Besides, petitioners' participation in the mediation/conciliation proceedings before the Cooperative Development Authority constitutes their implied acceptance that the dispute is, indeed, an intra-cooperative one.

WHEREFORE, the Petition is DENIED.

**SO ORDERED.**

Carpio (Chairperson), Brion, Del Castillo, and Mendoza, JJ., concur.

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[1] Rollo, pp. 4-22.

[2] Id. at 26-27.

[3] Id. at 31-32.

[4] Id. at 7.

[5] Id.

[6] CA rollo, pp. 86-87.

[7] Id. at 88-89.

[8] Rollo, p. 8.

[9] Id. at 38-44.

[10] The case was docketed as Civil Case No. 787-M-2005.

[11] Rollo, pp. 45-46.

[12] Id. at 56-59.

[13] Id. at 47.

[14] Id. at 50-51.

[15] Id. at 63-64.

[16] Id. at 85-88.

[17] Id. at 89.

[18] Id. at 90-91.

[19] Id. at 92-93. The Order was penned by Presiding Judge Olivia V. Escubio-Samar.

[20] Id. at 33-37. The Order was penned by Judge Crisanto C. Concepcion.

[21] CA rollo, pp. 2-22.

[22] Rollo, pp. 26-27. The Resolution was penned by Associate Justice Renato C. Dacudao (Chairman), and concurred by Associate Justices Lucas P. Bersamin (now an Associate Justice of this court) and Celia C. Librea-Leagogo.

[23] Cooperative Code of the Philippines (1990).

[24] An Act Creating the Cooperative Development Authority to Promote the Viability and Growth of Cooperatives as Instruments of Equity, Social Justice and Economic Development, Defining its Powers, Function and Responsibilities, Rationalizing Government Policies and Agencies with Cooperative Functions, Supporting Cooperative Development, Transferring the Registration and Regulation Functions of Existing Government Agencies on Cooperatives as such and Consolidating the Same with the Authority Appropriating Funds Therefor, and for Other Purposes (1990).

[25] Rollo, pp. 31-32.

[26] The petition was received by the court on June 23, 2006. Respondent filed its Comment (rollo, pp. 128-132) on September 29, 2006, and petitioner its Reply (rollo, pp. 144-152) on January 8, 2007.

[27] Rollo, pp. 133-139.

[28] Id. at 129. Respondents disclosed in their Comment that Branch 12 of the Regional Trial Court of Malolos, Bulacan has rendered judgment by default against petitioners on July 20, 2006, which became final and executory for failure of petitioners to appeal within the reglementary period. A photocopy of the Decision was attached as Annex A (rollo, pp. 133-139). Petitioners did not rebut nor contest this manifestation in their Reply.

[29] *Philtranco Service Enterprises, Inc. v. Philtranco Workers Union - Association of Genuine Labor Organizations*, G.R. No. 180962, February 26, 2014, 717 SCRA 340 [Per J. Del Castillo, Second Division]; *Republic v. Bayao*, G.R. No. 179492, June 5, 2013, <<http://sc.judiciary.gov.ph/jurisprudence/2013/june2013/179492.pdf>> [Per J. Leonen, Third Division]; *Bokingko v. Court of Appeals*, 523 Phil. 186 (2006) [Per J. Callejo, Sr., First Division]; *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, 479 Phil. 768 (2004) [Per J. Panganiban, Third Division]; *Metro Transit Organization, Inc. v. Court of Appeals*, 440 Phil. 743 (2002) [Per J. Carpio, First Division]; *Gonpu Services Corp. v. NLRC*, G.R. No. 111897 (Resolution), 334 Phil. 604 (1997) [Per J. Francisco, Third Division].

[30] *680 Home Appliances, Inc. v. Court of Appeals*, G.R. No. 206599, September 29, 2014, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/206599.pdf>> [Per J. Brion, Second Division]; *People's Air Cargo and Warehousing Co., Inc. v. Mendiola*, 634 Phil. 111 (2010) [Per J. Mendoza, Third Division]; *Cervantes v. Court of Appeals*, 512 Phil. 210 (2005) [Per J. Ynares-Santiago, First

Division], citing *Flores v. Sangguniang Panlalawigan of Pampanga*, 492 Phil. 377 (2005) [Per J. Sandoval-Gutierrez, Third Division] and *Siasoco v. Court of Appeals*, 362 Phil. 525 (1999) [Per J. Panganiban, Third Division].

[31] *Acance v. Court of Appeals*, 493 Phil. 676 (2005) [Per J. Callejo, Sr., Second Division]; *Gabi Multi Purpose Cooperative v. Republic*, 484 Phil. 459 (2004) [Per J. Panganiban, Third Division], citing *Tan v. Court of Appeals*, 341 Phil. 570, 576-578 (1997) [Per J. Francisco, Third Division]; *Phil. International Trading Corporation v. Commission on Audit*, 461 Phil. 737 (2003) [Per J. Ynares- Santiago, En Banc]; *Government of the United States of America v. Purganan*, 438 Phil. 417 (2002) [Per J. Panganiban, En Banc]; and *Indiana Aerospace University v. Commission on Higher Education*, 408 Phil. 483 (2001) [Per J. Panganiban, Third Division].

Jurisprudence recognizes the following as exceptions to the rule:

(a)

Where the order is a patent nullity, as where the court a quo has no jurisdiction;

(b)

Where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;

(c)

Where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;

(d)

Where under the circumstances, a motion for reconsideration would be useless;

(e)

Where petitioner was deprived of due process and there is extreme urgency for relief;

(f)

Where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;

(g)

Where the proceedings in the lower court are a nullity for lack of due process;

(h)

Where the proceedings was ex parte or in which the petitioner had no opportunity to object; and

(i)

Where the issue raised is one purely of law or where public interest is involved.

[32] *Cooperative Code of the Philippine* (1990).

[33] *An Act Creating the Cooperative Development Authority to Promote the Viability and Growth of Cooperatives as Instruments of Equity, Social Justice and Economic Development, Defining its Powers, Functions and Responsibilities, Rationalizing Government Policies and Agencies with Cooperative Functions, Supporting*

Cooperative Development, Transferring the Registration and Regulation Functions of Existing Government Agencies on Cooperatives as such and Consolidating the same with the Authority, Appropriating Funds Therefor, and for other Purposes (1990).

[34] 334 Phil. 424 (1997) [Per J. Regalado, Second Division], as cited in *Ongkingco v. NLRC*, 337 Phil. 299 (1997) [Per J. Kapunan, First Division].

[35] *Id.* at 429. See also *Gomez v. PNOC Development and Management Corporation*, 621 Phil. 173 (2009) [Per J. Abad, Second Division].

[36] In *Nacpil v. International Broadcasting Corporation*, 429 Phil. 410 (2002) [Per J. Kapunan, First Division], this court held that since petitioner's appointment as comptroller required the approval and formal action of the IBC's Board of Directors to become valid, petitioner was a corporate officer whose dismissal may be the subject of a controversy cognizable by the SEC under Section 5(c) of P.D. 902-A, which includes controversies involving both election and appointment of corporate directors, trustees, officers, and managers. Thus, jurisdiction over petitioner's claim of illegal dismissal properly belongs to the SEC, not to the NLRC.

Likewise, in *Union Motors Corporation v. NLRC*, 373 Phil. 310 (1999) [Per J. Quisumbing, Second Division], one who is included in the by-laws of an association in its roster of corporate officers is an officer of said corporation and not a mere employee. Since private respondent's position as Assistant to the President and Personnel & Administrative Manager is a corporate office under the by-laws of UMC, the inescapable conclusion is that private respondent was an officer of petitioner UMC. Hence, the determination of the rights of private respondent and the concomitant liability of petitioners arising from her ouster as a corporate officer partakes of the nature of an intra-corporate dispute subject to the jurisdiction of the SEC, not the NLRC.

[37] *Marc II Marketing, Inc. v. Joson*, 678 Phil. 232 (2011) [Per J. Perez, Second Division], citing *Easycall Communications Phils., Inc. v. King*, 514 Phil. 296, 302 (2005) [Per J. Corona, Third Division]. While Article 217(a)2 of the Labor Code, as amended, provides that it is the Labor Arbiter who has the original and exclusive jurisdiction over cases involving termination or dismissal of workers, a case automatically falls within the province of the Regional Trial Court when the person dismissed or terminated is a corporate officer. The dismissal of a corporate officer is always regarded as a corporate act and/or an intra-corporate controversy.

[38] *Rollo*, pp. 147-148.

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