

AIR MATERIEL WING SAVINGS AND LOAN ASSOCIATION, INC., COL. RICARDO L. NOLASCO, [JR.], PAF (RET.); COL. THADDEUS P. ESTALILLA, PAF (RET.); COL. ISMAEL A. ABAD; 2LT. MORADO O. MER...

G.R. No. 175338. April 29, 2008

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

This resolves the respondents' "Very Urgent Omnibus Motion (To Lift the Temporary Restraining Order Issued by the Court of Appeals Special Fourteenth Division, Annul the Election and the Result of the Election Conducted by AMWSLAI on 18 January 2008, and to Declare in Contempt of Court Individuals Defying the Decision of the Supreme Court in Civil Case (sic) No. 175338 Promulgated last 9 October 2007)" (the "Omnibus Motion," for brevity).[1]

The antecedents of this case are as follows:

Following the resignation of all eleven members of the Board of Trustees of the Air Materiel Wing Savings and Loan Association, Inc. (AMWSLAI), a new election of trustees was scheduled on October 14, 2005. Respondents Manay, Mantuano, Geronimo, Elaurza and Ocfemia, together with a few others, filed their respective certificates of candidacy for the election. However, respondents were disqualified and declared ineligible to run on the basis of alleged irregularities as found by the Bangko Sentral ng Pilipinas (BSP). Hence, they filed an election protest with the Regional Trial Court of Pasay City, docketed as RTC SEC Case No. 05-001-CFM. Respondents also filed an ex parte application for the issuance of a temporary restraining order (TRO), seeking to enjoin the holding of the scheduled election.

On October 13, 2005, the trial court issued the TRO prayed for, effective for 72 hours. Accordingly, the court sheriff, Virgilio Villar, served copies of the summons and the TRO on officers and members of the AMWSLAI. The same were received by Ms. Kathy Liong of the receiving office of AMWSLAI.

Later that afternoon, Ms. Liong returned the summons, TRO and the rest of the court documents to the trial court, stating that she was not authorized to receive them on behalf of the party-respondents.

In the meantime, the trial court, after hearing the application for TRO, denied the application therefor on the ground that the summonses were not properly served. As such, the court had not acquired jurisdiction over the respondents in the election protest.

The election was held as scheduled on October 14, 2005. Individual petitioners were declared winners and assumed office as new members of the Board of Trustees.

Respondents filed a petition for certiorari before the Court of Appeals to annul the trial court's order denying the TRO. The petition was docketed as CA-G.R. SP No. 92372. Respondents also prayed that the election of October

14, 2005 be nullified and that they be reinstated to the contested positions in a hold-over capacity until a new set of trustees shall have been elected and qualified. The Court of Appeals granted the petition and invalidated the October 14, 2005 election. The appellate court also ruled that the service of summons on Ms. Liong was proper substituted service. Resultantly, the election, which was ordered restrained, was declared null and void. Petitioners thus elevated the matter by way of the instant case.

At the core of the petition was the sufficiency of the substituted service of summons and, consequently, the validity of the election of October 14, 2005.

On October 9, 2007, we rendered judgment in this case, the dispositive part of which reads:

WHEREFORE, the petition is hereby DENIED. The Decision of the Court of Appeals, dated August 15, 2006, and its Resolution dated November 10, 2006, are AFFIRMED with the MODIFICATION that the election held on October 14, 2005, and the results thereof, are ANNULLED. The Temporary Restraining Order issued by this Court in its Resolution dated November 28, 2006, as amended on December 4, 2006, is hereby LIFTED.

SO ORDERED.[2]

Petitioners filed a Motion for Reconsideration, which we denied on December 3, 2007.[3] Their Motion for Leave and To Admit Attached Second Motion for Reconsideration was also denied on January 23, 2008.

Meanwhile, the court of origin issued an Order dated December 10, 2007 directing the eleven members of the Board of Trustees of AMWSLAI to vacate their positions in order to give way to the reinstatement of herein respondents, together with petitioners Ricardo L. Nolasco, Thaddeus P. Estalilla and Morado O. Mercado.

Subsequently, petitioners Col. Rolando Cacabelos and Lt. Cedric V. Reyes, together with Capt. Odelon Mendoza, instituted a totally separate special civil action for certiorari with prayer for TRO before the Court of Appeals, docketed as CA-G.R. SP No. 101627, assailing the trial court's Order of December 10, 2007.[4] On December 20, 2007, the Court of Appeals issued a TRO enjoining the enforcement of the trial court's December 10, 2007 Order.[5]

On January 18, 2008, an election of the Board of Trustees was held in accordance with the By-Laws of AMWSLAI. Seventeen candidates vied for the vacant seats. Respondents, having been disqualified by the BSP, were not among the candidates who were voted for in the said election.[6]

Respondents are now again before us in the instant Omnibus Motion, asking for the lifting of the TRO issued by the Court of Appeals in CA-G.R. SP No. 101627, the annulment of the election of January 18, 2008, and the declaration of individual petitioners in contempt of court for defying our Decision dated October 9, 2007.

In sum, respondents allege that after the trial court issued the Order of December 10, 2007, Sheriff Villar exerted efforts to execute the judgment of October 9, 2007. Respondents sought the assistance of Col. Procopio Lipana, Station Commander of the Quezon City Police District Station 7. According to them, Col. Lipana refused to give assistance, citing the pendency of the second motion for reconsideration before us. Nevertheless, respondents, accompanied by Sheriff Villar and Col. Lipana, proceeded to the AMWSLAI office, where they constituted themselves as members of an interim Board of Trustees. There being five of them out of eight incumbent members, and thereby sufficient to form a quorum, they then proceeded to hold a board meeting and appointed three other interim Board members to complete the eleven seats. Respondent Manay, acting as Chairman, directed the security guards to escort the newly appointed members into the AMWSLAI office, but the security guards refused to follow his directive. The Board of Trustees then requested Col. Lipana to assist them, but the latter begged off saying that the police personnel were only there to maintain peace and order. Upon motion of respondents, the trial court issued an Order deputizing the National Bureau of Investigation to implement its

December 10, 2007 Order. Again, the NBI agents refused to intervene.[7]

Respondents accuse petitioners of employing strong-arm tactics to frustrate the execution of this Court's Decision of October 9, 2007, manifested by their filing of the petition for certiorari (CA-G.R. SP No. 101627) and obtaining a TRO from the appellate court to enjoin the enforcement of the trial court's December 10, 2007 Order.[8]

In their Omnibus Motion, respondents contend that this Court has the authority to lift the appellate court's TRO; that the Philippine National Police should be deputized to assist in the execution of this Court's Decision; that the election held on January 18, 2008 should be declared null and void because it was called by petitioners who were no longer legitimate members of the Board of Trustees; and that petitioners, together with Col. Lipana, should be held in contempt of court for their defiance of this Court's Decision.

Petitioners filed their Opposition to the Omnibus Motion, arguing that respondents ignored the hierarchy of courts by coming to this Court for relief. First, they should have filed a motion for reconsideration of the TRO issued by the Court of Appeals. Second, they should have brought the matter up to this Court in a proper petition for certiorari. Anent respondents' prayer to annul the election of January 18, 2008, petitioners point out that jurisdiction does not rest with this Court but with the regional trial courts, pursuant to Republic Act No. 8799 and the Interim Rules of Procedure for Intra-Corporate Controversies.

We agree with petitioners.

It bears stressing that the instant case, G.R. No. 175338, is a petition for review from the Decision of the Court of Appeals in CA-G.R. SP No. 92372. On the other hand, in the Omnibus Motion, we are being asked to pass upon the validity of the TRO issued by the Court of Appeals in CA-G.R. SP No. 101627, a totally different case. This we cannot do.

The correct remedy for the respondents to seek the annulment of the appellate court's TRO is to file a motion for reconsideration and, upon its denial, to file a petition for certiorari and prohibition before this Court. They cannot obtain the lifting of the TRO by the mere expedient of a motion filed before this Court. We cannot take cognizance of proceedings before the Court of Appeals unless they are brought before us through the proper mode of review. The Omnibus Motion cannot be a substitute for the remedy of a special civil action for certiorari.

First, the Omnibus Motion was filed without the payment of docket fees, which is an indispensable requirement[9] before this Court can take cognizance of a case or controversy.[10] While the rule on non-payment of docket fees may be relaxed in extreme circumstances to better serve the ends of justice, respondents have offered no valid reasons for their case to fall within the exception. Worse, they are attempting to circumvent the Rules of Court by praying for reliefs in their Omnibus Motion which are available only through a petition for certiorari and prohibition. Second, the Omnibus Motion is so wanting in form and substance[11] that it cannot pass for a petition for certiorari and prohibition. There is none of the formal requirements such as the verification, certification on non-forum shopping, certified true copy of the questioned judgment, copies of all pertinent pleadings and documents, and verified statement of material dates. It cannot be gainsaid that these procedural prerequisites are intended to safeguard the integrity of the appeal process, which respondents cannot ignore. Furthermore, there is no allegation and proof as to the absence of an appeal or a plain, speedy, adequate remedy in the ordinary course of law. On the contrary, there is an available remedy to respondents before the Court of Appeals, as outlined above.

A party who seeks to avail of the extraordinary remedy of certiorari must observe the rules laid down by law and non-observance thereof may not be brushed aside as mere technicality.[12]

It is true that a litigation is not a game of technicalities and that the rules of procedure should not be strictly enforced at the cost of substantial justice. However, this does not mean that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution. It must be emphasized that procedural rules should not be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Like all rules, they are required to be followed except only for the most persuasive of reasons.[13]

The requirements of the rules on appeal cannot be considered as merely harmless and trivial technicalities that can be discarded at whim. To be sure, the Court will not countenance deviations from the rules. In these times when court dockets are clogged with numerous litigations, parties have to abide by these rules with greater fidelity in order to facilitate the orderly and expeditious disposition of cases.[14]

The sort of relief respondents seek in this case is unconventional to say the least. No such remedy is provided for under the Rules of Court. Procedural rules exist to provide a methodical system that would facilitate the judicious disposition of cases. A recourse that finds no authorization or support under the rules could in fact be aimed to subvert orderly procedure, an end that runs contrary to the interest of justice.[15]

Indeed, respondents have offered no justifiable or compelling reason for their non-observance of the proper course of action. Certainly, this Court must not tolerate, much less reward, this manifest disregard for the rules of procedure because it will open the floodgates to the filing of frivolous and misplaced motions such as this. Without a doubt, this will seriously impair the orderly administration of justice and the integrity of the appeal process.

More importantly, respondents are guilty of forum shopping, which is abhorred in this jurisdiction. It is clear that, by filing the Omnibus Motion, respondents seek to preempt the resolution of the very same issue that is currently pending before the Court of Appeals in CA-G.R. SP No. 101627.

The rule on forum shopping explicitly prohibits a party against whom an adverse judgment has been rendered in one forum from seeking another forum in the hope of obtaining a favorable disposition in the latter. Forum shopping is not only contumacious but also deplorable because it adds to the congestion of the heavily burdened dockets of the courts.[16]

In essence, forum shopping is the practice of litigants resorting to two different fora for the purpose of obtaining the same relief, to increase their chances of obtaining a favorable judgment. In determining whether forum shopping exists, it is important to consider the vexation caused to the courts and the parties-litigants by a person who asks appellate courts and/or administrative entities to rule on the same related causes and/or to grant the same or substantially the same relief, in the process creating the possibility of conflicting decisions by the different courts or fora on the same issues. We have ruled that forum shopping is present when, in two or more cases pending, there is identity of (1) parties (2) rights or causes of action and reliefs prayed for and (3) the identity of the two preceding particulars is such that any judgment rendered in the other action, will, regardless of which party is successful, amount to res judicata in the action under consideration.[17]

The case at bar, on the one hand, and CA-G.R. SP No. 101627, on the other hand, involve the same parties. A close comparison of the issues raised therein with those raised in the Omnibus Motion reveals that they revolve around the validity of the trial court's December 10, 2007 Order. Petitioners, for their part, seek to restrain the enforcement of the trial court's December 10, 2007 Order in CA-G.R. SP No. 101627. On the other hand, respondents, in their Omnibus Motion, maintain that the trial court's December 10, 2007 Order is valid insofar as it directed the enforcement of this Court's October 9, 2007 Decision. As such, any ruling that we might make in resolving the Omnibus Motion will constitute res judicata on the pending petition before the Court of Appeals.

As the present jurisprudence now stands, forum shopping can be committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (*litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (*res judicata*); and (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*). If the forum shopping is not considered willful and deliberate, the subsequent cases shall be dismissed without prejudice on one of the two grounds mentioned above. However, if the forum shopping is willful and deliberate, both (or all, if there are more than two) actions shall be dismissed with prejudice.[18] (*Italics copied*)

Forum shopping is an act of malpractice, as the litigants trifle with the courts and abuse their processes. It is improper conduct and degrades the administration of justice. If the act of the party or its counsel clearly constitutes willful and deliberate forum-shopping, the same shall constitute direct contempt, and a cause for administrative sanctions, as well as a ground for the summary dismissal of the case with prejudice.[19]

Coming now to the prayer for a contempt order, it should be remembered that the execution of our Decision is a matter left to the court of origin, in accordance with Rule 39, Section 1, second paragraph, viz:

If the appeal has been duly perfected and finally resolved, the execution may forthwith be applied for in the court of origin, on motion of the judgment obligee, submitting therewith certified true copies of the judgment or judgments or final order or orders sought to be enforced and of the entry thereof, with notice to the adverse party.

In this connection, the trial court has the power to compel obedience to the execution order and sanction parties who are found in defiance thereof. To do so, it would have to make findings of facts. This Court, on the other hand, is not a trier of facts. Its jurisdiction in these cases is limited to reviewing only errors of law that may have been committed by the lower courts.[20] Without making factual conclusions, we would not be in a position to resolve the motion for contempt in the instant case.

On a final note, it must be stated that the continuing battle of which group should sit in the governing body of the AMWSLAI has caused doubts and uncertainties in the minds of the hundreds of thousands who have invested their life savings therein. It affects not only the stability of this financial institution but of the economy at large. It is fitting that we should now write *finis* to this controversy, and allow the AMWSLAI to regain the confidence of its members and of the general public.

WHEREFORE, the Omnibus Motion is DENIED for lack of merit.

No further pleadings shall be entertained.

SO ORDERED.

Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.
Nachura, J., Please see dissent.

[1] Rollo, pp. 1884, et seq.

[2] *Id.* at 1304-1323, at 1321.

[3] *Id.* at 1368.

[4] *Id.* at 1455-1480.

[5] Id. at 1481-1484.

[6] Id. at 1874-1876.

[7] Omnibus Motion, pp. 2-8.

[8] Id. at 11-16.

[9] RULES OF COURT, Rule 141, Sec. 5.

[10] Sps. Manalili v. Sps. De Leon, 422 Phil. 214, 220-221 (2001).

[11] See RULES OF COURT, Rule 65, Secs. 1 and 2.

[12] De Los Santos, et al. v. Court of Appeals, G.R. No. 147912, April 26, 2006, 488 SCRA 351, 358.

[13] Abrenica v. Law Firm of Abrenica, Tungol and Tibayan, G.R. No. 169420, September 22, 2006, 502 SCRA 614, 624; De Los Santos v. Court of Appeals, supra.

[14] Basuel v. Fact-Finding & Intelligence Bureau, G.R. No. 143664, June 30, 2006, 494 SCRA 118, 123.

[15] Trans Middle East (Phils.) v. Sandiganbayan, G.R. No. 172556, June 9, 2006, 490 SCRA 455, 478.

[16] United Special Watchman Agency v. Court of Appeals, 453 Phil. 363, 370 (2003).

[17] La Campana Development Corp. v. See, G.R. No. 149195, June 26, 2006, 492 SCRA 584, 588-589.

[18] Ao-as v. Court of Appeals, G.R. No. 128464, June 20, 2006, 491 SCRA 339, 354-355.

[19] Montes v. Court of Appeals, G.R. No. 143797, May 4, 2006, 489 SCRA 432, 439.

[20] Basuel v. Fact-Finding and Intelligence Bureau (FFIB), supra note 14 at 127.

DISSENTING OPINION

NACHURA, J.:

The majority has voted to deny the respondents' Omnibus Motion purely on procedural grounds.

First, the correct remedy for the respondents to seek the annulment of the appellate court's Temporary Restraining Order (TRO) is to file a motion for reconsideration before the Court of Appeals (CA), and upon its denial, to file a petition for certiorari and prohibition before this Court. Second, the Omnibus Motion was filed without the payment of docket fees which is an indispensable requirement before this Court can take cognizance of a case. Third, the motion is so wanting in form and substance. Lastly, respondents are guilty of forum shopping.

With all due respect, I must dissent.

The procedural infirmities enumerated in the ponencia are more apparent than real.

The special civil action for certiorari with the CA cannot be considered a new, separate and independent case. In that action, the very same petitioners (as in this case) sought the CA's intervention to annul and restrain implementation of the RTC's December 10, 2007 Order, and to which the CA obliged.

But the RTC's December 10, 2007 Order was issued merely to implement our October 9, 2007 decision. Note that the RTC's December 10 Order was issued in compliance with our October 9 ruling. Accordingly, when the CA issued the TRO against the December 10 RTC order, the CA effectively restrained the enforcement of our

October 9 decision. Certainly, we should not countenance such an affront to our authority.

In the face of the TRO issued by the CA, it was a natural reaction for the respondents to come rushing back to us for relief, not through a new petition, but through a Motion filed in the same case. This notwithstanding the Comment they already filed before the CA. Contrary to the majority opinion that this is a clear case of forum shopping, I maintain that the instant motion is the correct and proper remedy of the respondents. After all, this was merely an incident flowing from the execution of our October 9, 2007 decision. To require the respondents to file a separate and independent action to challenge the CA order would lead to an absurd situation where we would be setting up procedural barriers to prevent the enforcement of our own decision.

I am also in favor of writing *finis* to this controversy, in order to restore the stability and integrity of AMWSLAI as an institution - but not at the expense of the circumvention, if not the outright disregard, of our October 9, 2007 decision. A brief reference to the key facts is necessary to illustrate how the petitioners repeatedly committed acts of defiance to the lawful orders of the court.

On October 9, 2007, the Court rendered a Decision[1] affirming with modification the Court of Appeals' Decision dated August 15, 2006 in CA-G.R. SP No. 92372 and lifting the Temporary Restraining Order (TRO) it earlier issued. The Court ordered respondents, together with petitioners Nolasco, Jr., Estalilla and Mercado, to assume office and remain as trustees of AMWSLAI until the election and proclamation of winners in a valid, lawful and orderly election.

On October 15, 2007, respondents filed an Omnibus Motion[2] before the Regional Trial Court (RTC)[3] seeking the implementation of the order of reinstatement which was earlier restrained by the Court. The RTC, however, deferred action on the motion on the ground that our October 9 Decision had yet to attain finality, a Motion for Reconsideration[4] having been filed by petitioners. On December 3, 2007, the Court issued a Resolution[5] denying with finality petitioners' motion for reconsideration. This notwithstanding, petitioners filed a Motion for Leave to Admit Attached Second Motion for Reconsideration.[6] The Court denied the motion for leave considering that it is a prohibited pleading, and consequently, noted without action the attached second motion for reconsideration.

Meanwhile, in view of the denial of petitioners' motion for reconsideration, on December 10, 2007, the RTC issued an Order[7] implementing the October 9 Decision. To implement said Order, Sheriff Virgilio F. Villar initially declared vacant the positions held by the incumbent members of the Board of Trustees. He then asked the three petitioners (who were ordered reinstated by the Court) to join respondents in the AMWSLAI board room in order to reinstate all of them and to seat them as Interim AMWSLAI Board of Trustees. Petitioners, however, refused to obey the court order. Though they were technically reinstated, respondents were allegedly prevented by petitioners ("incumbent" members) from discharging their lawful duties.

Petitioners then instituted a special civil action for certiorari with prayer for TRO before the Court of Appeals (CA), questioning the RTC's December 10 Order.[8] The case was docketed as CA-G.R. SP No. 101627. On December 20, 2007, the CA issued a TRO restraining the enforcement of the December 10 Order.[9] Specifically, it enjoined the "reinstated" members from discharging their rights and duties.

Thereupon, the "incumbent members" of the Board adopted a Resolution on December 3, 2007 calling for a General Membership Meeting and Election of the members of the Board on January 18, 2008. The election was held as scheduled.[10]

Respondents now come before the Court in this Very Urgent Omnibus Motion: 1) to lift the TRO issued by the CA; 2) to annul the election conducted on January 18, 2008 and the results thereof; and 3) to declare in contempt

of court individuals defying our October 9, 2007 Decision. Petitioners vehemently oppose said omnibus motion.

I vote to partly grant the omnibus motion.

Records show that notwithstanding the finality of this Court's October 9 Decision, petitioners continue to show acts of resistance and have resorted to every ploy to circumvent, if not actually frustrate, the enforcement of our decision.

In their motion for reconsideration which we denied with finality on December 3, 2007, petitioners raised a new issue to justify their acts of resistance: that subsequent events made it impossible to reinstate respondents to their respective positions. They claimed that there was an election of Board members held in December 2006, and so they argued that there was no more practical need to order the reinstatement of respondents for the simple reason that the positions they previously held had already been filled up through a valid and legal election.[11] However, in petitioners' memorandum, which they filed on April 25, 2007, no allegation of such fact was made. Neither was it included as one of their arguments in support of their petition. Considering that the alleged event took place before the promulgation of our Decision and even before the filing of their memorandum, it cannot be considered a supervening event that may be raised for the first time in a motion for reconsideration. Thus, we denied their motion with finality.

Nonetheless, I would like to point out that when the election was conducted in December 2006, the CA already rendered a decision annulling the 2005 election. Petitioners, therefore, had full knowledge that they no longer had the authority to occupy the contested positions. Obviously, the election in December 2006 was conducted in haste, the board resolution calling for such was adopted in bad faith, and the same was resorted to for the purpose of defeating the appellate court's decision. I cannot condone such action. Thus, I refuse to impress that election with the stamp of validity.

This Court's October 9, 2007 Decision had attained finality. Its execution was simply a ministerial duty on the part of the RTC. As such, the RTC's December 10, 2007 Order suffered no infirmity; thus, it could not be the proper subject of a writ of certiorari or a TRO. Otherwise stated, the questioned RTC order only implements a lawful and final order of the Supreme Court. There is no doubt that the TRO issued by the CA dated December 20, 2007 rendered inutile the October 9 Decision of this Court. It created an absurd situation in which the CA enjoined the implementation of a final and executory decision of the Supreme Court. The TRO, likewise, paved the way for the "incumbent members" of the Board to exercise powers which they were no longer entitled to --- calling for and conducting the general membership assembly meeting and election of board members.

Pursuant to the policy of judicial stability, the judgment or order of a court of competent jurisdiction may not be interfered with by any court of concurrent jurisdiction (more so by a court of lower jurisdiction) for the simple reason that the power to open, modify or validate a judgment or order is not only exercised by, but is restricted to, the court which rendered the judgment or order. A contrary rule would lead to confusion and seriously hamper the administration of justice.[12] Thus, in the interest of justice and to give effect to our decision, I am for the lifting of the TRO issued by the CA on December 20, 2007.

Contrary to the petitioners' contention that the authority to lift the TRO is vested only in the CA which issued it, this Court is not powerless to order its lifting and consequent nullification. Settled is the rule that the tribunal which rendered the decision or award has a general supervision and control over the process of its execution, and this includes the power to determine every question of fact and law which may be involved in the execution.[13]

This Court's Decision was promulgated on October 9, 2007, and the subsequent resolution denying the motion for reconsideration was issued on December 3, 2007. This notwithstanding, the "incumbent members" of the Board

called a general assembly and election of new members of the AMWSLAI Board of Trustees. Considering their knowledge of the aforesaid decision and resolution and despite the already existing order of implementation issued by the RTC, an election was again^[14] called and conducted with obvious haste, in a transparent attempt to circumvent the decision of this Court. Indeed, petitioners have acted in bad faith and defied, as they continue to defy, the lawful orders of the Court. This I cannot permit.

Pursuant to our October 9 Decision, I continue to recognize respondents and the three petitioners (namely, Nolasco, Jr., Estalilla and Mercado) as the rightful occupants of the positions of members of the Board until the election and proclamation of the winners in a valid, lawful and peaceful election. Consequently, they alone are empowered to call such election.

I believe that the most practical approach to settle the present controversy and to restore the orderly conduct of the business of the association is to direct the respondents and the petitioners (whose entitlement to sit as members of the Board of Trustees we upheld) to convene as an Interim Board of Trustees of AMWSLAI. Thereupon, they should, once and for all, call for the holding of the election of the association's board members and conduct the same at the soonest possible time.

The most important part of a litigation, whether civil or criminal, is the process of execution of decisions, in which supervening events may change the circumstance of the parties and compel courts to intervene and adjust the rights of the litigants to prevent unfairness. It is because of these unforeseen, supervening contingencies that the inherent and necessary power of control of court processes and orders have been conceded to the courts to make them conformable to law and justice.^[15]

In view of the finality of this Court's October 9, 2007 Decision, undoubtedly, the RTC's December 10, 2007 Order is also valid. Considering the public interest involved, especially that of the members who have entrusted their hard-earned money to the association, I cannot allow the perpetration of any act that would delay and impede the implementation of this Court's decision. Thus, I find no reason for the special civil action for certiorari filed before the CA to continue. To allow it to proceed would open the doors to further delay in the resolution of the present issues, and worse, allow the CA to rule on matters already resolved with finality by this Court. Hence, the dismissal of CA-G.R. SP No. 101627 is in order, notwithstanding any procedural obstacle that the parties may hereafter invoke. After all, Section 6, Rule 135 of the Rules of Court provides:

Sec. 6. Means to carry jurisdiction into effect. - When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules.

As to the motion for contempt of court, suffice it to state that the power to declare a person in contempt of court must be exercised on the preservative, not vindictive principle, and on the corrective and not retaliatory idea of punishment.^[16] At this point, I find it unnecessary to declare petitioners and their counsel in contempt of court.

I, therefore, respectfully submit that the most expedient and practical approach to end this controversy of which group should sit as members of the AMWSLAI Board is to lift the TRO issued by the CA and, consequently, to dismiss the petition in CA-G.R. SP No. 101627 pending before it, to pave the way to the full implementation of our October 9, 2007 Decision. Thereafter, the election should be called and eventually held, thereby removing all doubts as to the authority of the parties to sit in the governing body of AMWSLAI. This way, AMWSLAI, as an institution, will truly regain the confidence of its members and of the general public.

- [1] Rollo, pp. 1304-1323.
- [2] Id. at 1442-1446.
- [3] RTC, Branch 117, Pasay City, in RTC SEC Case No. 05-001-CFM.
- [4] Rollo, pp. 1331-1363.
- [5] Id. at 1368-1369.
- [6] Id. at 407-1429.
- [7] Id. at 1447-1449
- [8]Id. at 1455-1480.
- [9] Id. at 1482-1484.
- [10] Id. at 1874-1876.
- [11]Id. at 1360.
- [12]Atty. Javier v. Court of Appeals, 467 Phil 404, 430 (2004).
- [13]Balais v. Hon. Velasco, 322 Phil 790, 806 (1996).
- [14] After the promulgation of the CA decision, petitioners called for the holding of the 2006 election.
- [15] Echegaray v. Secretary of Justice, 361 Phil 73, 84-85 (1999).
- [16] The Senate Blue Ribbon Committee v. Hon. Majaducon, 455 Phil 61, 75 (2003); Oclarit v. Paderanga, 403 Phil 146, 153 (2001).

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