

## THIRD DIVISION

[ G.R. No. 175338, October 09, 2007 ]

**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. MERCADO, PAF (RET.); 2LT. CESAR S. TOLEDANES, PAF (RET.); COL. DOMINGO E. DIMAPILIS JR., PAF; COL. ANTONIO S. GUMBA, PAF (RET.); 2LT. RICARDO P. PERIDO; 2LT. CEDRIC V. REYES, PAF (RET.); BGEN. RUBEN C. ESTEPA, PAF (RET.); COL. ANGEL E. TAPAC, PAF (RET.); AND MAJ. ROLANDO S. CACABELOS, PAF (RET.), PETITIONERS, VS. COL. LUVIN S. MANAY, PNP (RET.); COL. ANTONIO MANTUANO, PAF (RET.); COL. ANSELMO R. GERONIMO, PAF (RET.); MAJ. JOSE A. ELAURZA, PAF (RET.); LT. JOHNSON NESTOR OCFEMIA, PAF (RET.); AND HON. JESUS B. MUPAS, PRESIDING JUDGE, REGIONAL TRIAL COURT OF PASAY CITY, BRANCH 117, RESPONDENTS.**

### DECISION

**NACHURA, J.:**

Before the Court is a Petition for Review on *Certiorari* of the Decision<sup>[1]</sup> of the Court of Appeals (CA), dated August 15, 2006, in CA-G.R. SP No. 92372, and its Resolution<sup>[2]</sup> dated November 10, 2006. The assailed Decision annulled and set aside the Orders<sup>[3]</sup> issued by the Regional Trial Court (RTC), Pasay City, Branch 117, dated October 14, 2005 and October 28, 2005 in RTC SEC CASE NO. 05-001-CFM.

The facts of the case are as follows:

Petitioner Air Materiel Wing Savings and Loan Association, Inc. (AMWSLAI) is a corporation duly organized and existing under and by virtue of the laws of the Philippines. Under its *By Laws*,<sup>[4]</sup> the eleven (11) members of its Board of Trustees (Board) shall hold office for a term of three (3) years.

Conceding to the clamor for a new set of Trustees, respondents Col. Luvin S. Manay, (Ret.); Col. Antonio Mantuano (Ret); 2Lt. Johnson Nestor Ocfemia (Ret.); Maj. Jose A. Elaurza (Ret.); and Col. Anselmo R. Geronimo (Ret.) and petitioners Col. Ricardo Nolasco, Jr., Col. Thaddeus Estalilla, and Lt. Morado Mercado, then members of the Board of Trustees (Board), cut short their terms and submitted *en masse* their letters of resignation dated July 22, 2005, effective at the close of business hours of September 14, 2005. Three (3) other members of the Board had earlier resigned from their positions.

On September 7, 2005, the Board accepted the mass resignation effective upon the election and proclamation of winners; and declared vacant all the eleven seats,

embodied in *Board Resolution No. 2005-353*.<sup>[5]</sup> The said Resolution likewise provided for the holding of a general election on October 14, 2005.

Pursuant to Article XIII of AMWSLAI By-Laws, the Board created a Committee on Elections (AMWSLAI-COMELEC) composed of MGen. Rodolfo S. Estrellado (Ret.) (Estrellado), as Chairman, and Col. Gregorio G. Paduganan (Paduganan) and Lt. Col. Rolando G. Jungco (Jungco) as Members.

Respondents and petitioners Col. Nolasco, Jr., Col. Estalilla, Lt. Mercado, Col. Ismael Abad, BGen. Ruben Estepa, Col. Domingo Dimapilis, Jr., Col. Antonio Gumba, Col. Angel Tapac, Maj. Rolando Cacabelos, Lt. Cesar Toledanes, Lt. Ricardo Perido, and Lt. Cedric Reyes, filed their respective Certificates of Candidacy for the October 14 election. Unfortunately, the AMWSLAI-COMELEC disqualified respondents, declaring them ineligible to run in the election purportedly for committing acts indicated in the Report of Examination of the Bangko Sentral ng Pilipinas (BSP).<sup>[6]</sup> Accordingly, notices of disqualification were individually sent to them.<sup>[7]</sup> Consequently, respondents tried to withdraw their respective resignations on the ground that these were tendered upon an understanding that there would be a fair and honest election on October 14, 2005. It appears, however, that the withdrawals were not acted upon by the former Board.

Aggrieved, respondents filed a Petition for Election Protest With Prayer for a Writ of Preliminary Injunction/Prohibition and/or Temporary Restraining Order<sup>[8]</sup> on October 12, 2005, before the Regional Trial Court (RTC) of Pasay City against the AMWSLAI-COMELEC, represented by Estrellado, Paduganan and Jungco, and AMWSLAI. Respondents sought to enjoin the AMWSLAI-COMELEC from disqualifying them as candidates and to stop the holding of the October 14 election. Respondents averred that the act of AMWSLAI-COMELEC in disqualifying them to run for office was unwarranted because their alleged violations which were the bases of the disqualification were still under investigation by the BSP.

Also on even date, respondents filed an Ex-Parte Motion for Immediate/Special Raffle and/or Cognizance and Issuance of An Ex-Parte Temporary Restraining Order.

On October 13, 2005, Executive Judge Caridad H. Grecia-Cuerdo of the RTC of Pasay City issued an Order<sup>[9]</sup> granting respondents' prayer for a 72-hour Temporary Restraining Order (TRO), as follows:

The petitioners have fully established to the satisfaction of this Court that if the holding of the "GENERAL ELECTIONS" of the members of the Board of Trustees of AMWSLAI, scheduled on October 14, 2005 from 8:00 a.m. to 5:00 p.m. will not be enjoined or restrained, they stand to suffer grave injustice and irreparable injury. The matter is also of extreme urgency taking into consideration that the act sought to be enjoined/restrained is scheduled to be held tomorrow, October 14, 2005.

WHEREFORE, an Executive Temporary Restraining Order is hereby issued for a period of 72 hours from today, restraining the Respondents [petitioners] from holding and/or conducting the subject election scheduled on October 14, 2005 at 8:00 a.m. to 5 p.m. This is without prejudice to the provision of Section 5, Rule 58 of the 1997 Rules of

Court. The Clerk of Court and Ex-Officio Sheriff or any [of] her Deputy Sheriff is hereby ordered to cause the implementation of this Order. Service of the required notice of hearing shall be served by the commercial court to which this case will be assigned."

On the same date, Sheriff Virgilio Villar (sheriff Villar) served copies of the Summons (with copy of Complaint and its Annexes), Notice of Raffle and the 72-Hour TRO, at the AMWSLAI Building, thru Ms. Kathy Liong (Ms. Liong), an "authorized receiving personnel," as shown in the Sheriff's Return hereunder reproduced:

#### SHERIFF'S RETURN

This is to certify that on this date October 13, 2005, undersigned Sheriff IV, caused the service of Summons together with the attached Complaint and its Annexes, copy of Order dated October 13, 2005 and Notice of Raffle dated October 13, 2005 in connection with the above-entitled case upon defendants, THE COMMITTEE ON ELECTIONS OF AIR MATERIEL WING SAV. AND LOAN ASSOC., MAJ. GEN. RODOLFO S. ESTRELLADO, COL. GREGORIO G. PADUGANAN, LTC. ROLANDO G. JUNGCO AND AIR MATERIEL WING SAV. AND LOAN ASSOC., INC., all of AMWSLAI BLDG., cor. B. Serrano and 18<sup>th</sup> St., Murphy Quezon City, thru MS. KATHY LIONG, AMWSLAI's authorized receiving personnel who personally received copies of said Court Processes on behalf of all the above-named defendants, as shown by her signature appearing on the original copy of summons, Order and Notice of Raffle.<sup>[10]</sup>

However, in the afternoon of the same day, Ms. Liong returned all the pleadings/notices and orders to the Office of the Clerk of Court of the RTC, Pasay City. In her letter, Ms. Liong stated that she was returning the documents because they were mistakenly left with her although she was not authorized to receive the copies on behalf of Estrellado, Paduganan and Jungco.<sup>[11]</sup>

The following day, the Presiding Judge of Branch 117, RTC, Pasay City (where the case was subsequently raffled) conducted a hearing on the application for the 20-day TRO. Counsels for respondents and AMWSLAI appeared. On the other hand, intervenor Atty. Fe Padilla, one of the candidates for the Board, entered her appearance on her behalf.<sup>[12]</sup>

After the aforesaid hearing, the RTC issued an Order<sup>[13]</sup> dated October 14, 2005 denying the issuance of a TRO upon a finding that summonses were not properly served upon the members of AMWSLAI-COMELEC. The RTC ratiocinated that the summonses intended for the members of the COMELEC were erroneously served upon Ms. Liong without any showing that she was authorized to receive them on behalf of the COMELEC members. There was, likewise, no showing that the COMELEC members were holding office and conducting business in the given address. The court further emphasized that resort to substituted service was not warranted because of the failure of the Sheriff to exert effort to effect personal service, evidenced by the above-quoted sheriff's return. Consequently, no summons, no petition, and no restraining order were served upon them, thus, the court had not acquired jurisdiction over these persons.<sup>[14]</sup>

Meanwhile, the October 14 election was held as scheduled, where the petitioners were declared winners.<sup>[15]</sup> They then took their oath on October 17, 2005,<sup>[16]</sup> and subsequently, assumed office as members of the Board.

On October 19, 2005, Sheriff Villar submitted a Sheriff's Supplemental Report<sup>[17]</sup> explaining the resort to substituted service. Forthwith, respondents filed a Motion to Recall Order Declaring Non-Service of Order,<sup>[18]</sup> which virtually sought reconsideration of the order denying the issuance of the TRO. The RTC denied the motion in an Order<sup>[19]</sup> dated 28 October 2005.

Failing to obtain a favorable judgment, respondents filed a petition for *certiorari* before the CA seeking to nullify the assailed RTC Orders for having been issued with grave abuse of discretion. They likewise prayed that the October 14 election be nullified and that respondents be eventually reinstated to the contested positions in a hold over capacity until a new set of trustees be validly elected in a new election called for the purpose.<sup>[20]</sup>

In a Decision dated August 15, 2006, the CA found merit in the petition, annulled the assailed RTC Orders and invalidated the October 14 election.<sup>[21]</sup> Considering that the AMWSLAI-COMELEC did not have a personality separate from AMWSLAI, and that the members of the former were using the letterhead of the latter in all their correspondence, the CA held that the summons served on Ms. Liong was sufficient. The appellate court gave credence to the Sheriff's Supplemental Report in validating the resort to substituted service of summons. Thus, the CA concluded that the holding of the election despite the 72-hour TRO which was effectively served on AMWSLAI-COMELEC, deprived the respondents of the right to assail their disqualification, and was, therefore, null and void.

Petitioners' motion for reconsideration proved futile. Hence, the present petition.

Meantime, on the strength of the CA decision, respondents filed a Motion for Reinstatement<sup>[22]</sup> before the RTC, praying that they be reinstated to their position as members of the AMWSLAI Board which the RTC granted in an Order<sup>[23]</sup> dated November 22, 2006.

However, on November 28, 2006, this Court issued a TRO enjoining implementation of the CA Decision dated August 15, 2006 and Resolution dated November 10, 2006. On December 4, 2006, the Court amended the November 28, 2006 Resolution, stating further that "x x x and in the event that respondents have been reinstated, they are temporarily enjoined from discharging or further performing the functions of the members of the AMWSLAI Board and to vacate their positions immediately."<sup>[24]</sup> This TRO has remained in force up to this date, albeit respondents have repeatedly filed motions to lift the same.

The issues for resolution, as set forth in the Memorandum for the petitioners, are the following:

## I.

WHETHER OR NOT PETITIONERS VIOLATED THE 72-HOUR TEMPORARY RESTRAINING ORDER DESPITE THE FACT THAT THE SAID ORDER WAS A NULLITY, AND THE ISSUANCE THEREOF WAS IMPROPER, ILLEGAL AND INVALID, FOR HAVING VIOLATED THE INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES.

II.

WHETHER OR NOT THE RULING OF THE HONORABLE JUDGE HENRICK F. GINGOYON OF THE REGIONAL TRIAL COURT OF PASAY CITY, BRANCH 117, THAT THERE WAS NO VALID SERVICE OF SUMMONS AND THE 72-HOUR TRO UPON THE AMWSLAI-COMELEC AND/OR UPON MAJ. GEN. RODOLFO S. ESTRELLADO, COL. GREGORIO G. PADUGANAN AND LT. COL. ROLANDO G. JUNGCO, IS CORRECT.

III.

WHETHER OR NOT THE HONORABLE JUDGE GINGOYON GRAVELY ABUSED HIS DISCRETION WHEN HE DENIED THE RESPONDENTS' APPLICATION FOR TEMPORARY RESTRAINING ORDER AND THE MOTION TO RECALL SAID ORDER.

IV.

WHETHER OR NOT THE RESPONDENTS WERE DEPRIVED OF THEIR RIGHT TO ASSAIL THEIR DISQUALIFICATION TO BE ELECTED AS MEMBERS OF THE BOARD OF TRUSTEES OF AMWSLAI IN THE OCTOBER 14, 2005 ELECTION AND THE RESULTS OF THE SAID ELECTION.

V.

WHETHER OR NOT THE RESPONDENTS' CLAIM THAT THE ORDER DATED NOVEMBER 22, 2006 OF THE REGIONAL TRIAL COURT OF PASAY CITY, BRANCH 117, IS CORRECT, SHOULD BE GIVEN CREDENCE.

VI.

WHETHER OR NOT CREDENCE SHOULD BE GIVEN TO RESPONDENTS' CLAIM THAT AMWSLAI WILL SUFFER GRAVE AND IRREPARABLE INJURY WHILE THIS CASE REMAINS UNRESOLVED AND THE DECEMBER 4, 2006 TEMPORARY RESTRAINING ORDER (TRO) OF THIS HONORABLE COURT REMAINS EFFECTIVE, DESPITE THE FACT THAT LIFTING THE TRO IS PREMATURE AT THIS STAGE OF THE PROCEEDINGS.

VII.

WHETHER OR NOT THE ALLEGATION OF THE RESPONDENTS THAT PETITIONER RICARDO NOLASCO, JR., WHO IS ACTING AS CHAIRMAN OF THE AMWSLAI BOARD, HAS ENGAGED IN IRREGULAR TRANSACTIONS CLEARLY INIMICAL TO THE INTEREST OF AMWSLAI, IS FALSE, UNFOUNDED AND UNSUBSTANTIATED.<sup>[25]</sup>