

SECOND DIVISION

[G.R. No. 206038, January 25, 2017]

MARY E. LIM, REPRESENTED BY HER ATTORNEY-IN-FACT, REYNALDO V. LIM, PETITIONER, VS. MOLDEX LAND, INC., 1322 ROXAS BOULEVARD CONDOMINIUM CORPORATION, AND JEFFREY JAMINOLA, EDGARDO MACALINTAL, JOJI MILANES, AND CLOTHILDA ANNE ROMAN, IN THEIR CAPACITY AS PURPORTED MEMBERS OF THE BOARD OF DIRECTORS OF 1322 GOLDEN EMPIRE CORPORATION, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the March 4, 2013 Decision^[1] of the Regional Trial Court of Manila, Branch 24, (RTC) in Civil Case No. 12-128478, which dismissed the complaint against the respondents for 1] annulment of the July 21, 2012 general membership meeting of 1322 Roxas Boulevard Condominium Corporation (*Condacor*); 2] annulment of election of Jeffrey Jaminola (*Jaminola*), Edgardo Macalintal (Macalintal), Joji Milanese (*Milanes*), and Clothilda Anne Roman (*Roman*) (collectively referred to as "individual respondents") as members of the Board of Directors; and 3] accounting.

The primordial issue presented before the RTC, acting as a special commercial court, was the validity, legality and effectivity of the July 21, 2012 Annual General Membership Meeting and Organizational Meeting of Condacor's Board of Directors.^[2]

Initially, the Court, in its Resolution^[3] dated April 1, 2013, denied the petition for having availed of the wrong mode of appeal because Lim raised mixed questions of fact and law, which should have been filed before the Court of Appeals (CA).^[4] Upon motion for reconsideration, however, the Court granted it. Thereafter, the respondents filed their Comment^[5] and Lim filed a Reply^[6] thereto.

The Antecedents

Lim is a registered unit owner of 1322 Golden Empire Tower (*Golden Empire Tower*), a condominium project of Moldex Land, Inc. (*Moldex*), a real estate company engaged in the construction and development of high end condominium projects and in the marketing and sale of the units thereof to the general public. Condacor, a non-stock, non-profit corporation, is the registered condominium corporation for the Golden Empire Tower. Lim, as a unit owner of Golden Empire Tower, is a member of Condacor.

Lim claimed that the individual respondents are *non-unit buyers*, but all are

members of the Board of Directors of Condocor, having been elected during its organizational meeting in 2008. They were again elected during the July 21, 2012 general membership meeting.^[7]

Moldex became a member of Condocor on the basis of its ownership of the 220 unsold units in the Golden Empire Tower. The individual respondents acted: as its representatives.

On July 21, 2012, Condocor held its annual general membership meeting. Its COrporate secretary certified, and Jaminola, as Chairman, declared the existence of a quorum even though only 29 of the 108^[8] unit buyers were present. The declaration of quorum was based on the presence of the majority of the voting rights, including those pertaining to the 220 unsold units held by Moldex through its representatives. Lim, through her attorney-in-fact, objected to the validity of the meeting. The objection was denied. Thus, Lim and all the unit owners present, except for one, walked out and left the meeting.

Despite the walkout, the individual respondents and the other unit owner proceeded with the annual general membership meeting and elected the new members of the Board of Directors for 2012-2013. All four (4) individual respondents were voted as members of the board, together with three (3) others whose election was conditioned on their subsequent confirmation.^[9] Thereafter, the newly elected members of the board conducted an organizational meeting and proceeded with the election of its officers. The individual respondents were elected as follows:

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| 1. Atty. Jeffrey Jaminola | - Chairman of the Board and President |
| 2. Ms. Joji Milanes | - Vice-President |
| 3. Ms. Clothilda Ann Roman | - Treasurer |
| 4. Mr. Edgardo Macalintal | - Corporate Secretary |
| 5. Atty. Ma. Rosario Bernardo | - Asst. Corporate Secretary |
| 6. Atty. Mary Rose Pascual | - Asst. Corporate Secretary |
| 7. Atty. Jasmin Cuizon | - Asst. Corporate Secretary ^[10] |

Consequently, Lim filed an election protest before the RTC. Said court, however, dismissed the complaint holding that there was a quorum during the July 21, 2012 annual membership meeting; that Moldex is a member of Condocor, being the registered owner of the unsold/unused condominium units, parking lots and storage areas; and that the individual respondents, as Moldex's representatives, were entitled to exercise all membership rights, including the right to vote and to be voted.^[11] In so ruling, the trial court explained that the presence or absence of a quorum in the subject meeting was determined on the basis of the voting rights of all the units owned by the members in good standing.^[12] The total voting rights of unit owners in good standing was 73,376 and, as certified by the corporate secretary, 83.33% of the voting rights in good standing were present in the said meeting, inclusive of the 58,504 voting rights of Moldex.^[13]

Not in conformity, Lim filed the subject petition raising the following

ISSUES

- A. THE LOWER COURT GRAVELY ERRED IN RULING THAT IN DETERMINING THE PRESENCE OR ABSENCE OF QUORUM AT GENERAL OR ANNUAL MEMBERSHIP MEETINGS OF RESPONDENT CONDOCOR, EVEN NON UNIT BUYERS SHOULD BE INCLUDED DESPITE THE EXPRESS PROVISION OF ITS BY-LAWS, THE LAW AND SETTLED JURISPRUDENCE;**
- B. THE LOWER COURT ERRED IN RULING THAT RESPONDENT MOLDEX IS A MEMBER OF RESPONDENT CONDOCOR AND THAT IT MAY APPOINT INDIVIDUAL RESPONDENTS TO REPRESENT IT THEREIN;**
- C. EVEN ASSUMING THAT RESPONDENT MOLDEX MAY BE A MEMBER OF RESPONDENT CONDOCOR, THERE IS STILL NO BASIS FOR IT TO BE ELECTED TO THE BOARD OF DIRECTORS OF RESPONDENT CONDOCOR BECAUSE IT IS A JURIDICAL PERSON;**
- D. ASSUMING FURTHER THAT DESPITE BEING A JURIDICAL PERSON, IT MAY BE ELECTED TO THE BOARD OF DIRECTORS OF RESPONDENT CONDOCOR, THERE IS NO LEGAL BASIS FOR THE LOWER COURT TO HOLD THAT RESPONDENT MOLDEX HAS AUTOMATICALLY RESERVED FOUR SEATS THEREIN; AND,**
- E. THE LOWER COURT GRAVELY ERRED IN RULING TO RECOGNIZE RESPONDENT MOLDEX AS OWNER DEVELOPER HAVING FOUR RESERVED SEATS IN RESPONDENT CONDOCOR BOARD, AS SUCH RULING EFFECTIVELY ALLOWED THE VERY EVIL THAT PD 957 SOUGHT TO PREVENT FROM DOMINATING THE CONTROL AND MANAGEMENT OF RESPONDENT CONDOCOR TO THE GRAVE AND IRREPARABLE DAMAGE AND INJURY OF PETITIONER AND THE OTHER UNIT BUYERS, WHO ARE THE BONA FIDE MEMBERS OF RESPONDENT CONDOCOR.**

In sum, the primordial issues to be resolved are: 1) whether the July 21, 2012 membership meeting was valid; 2) whether Moldex can be deemed a member of Condocor; and 3) whether a non-unit owner can be elected as a member of the Board of Directors of Condocor.

Procedural Issues

The issues raised being purely legal, the Court may properly entertain the subject petition.

The subject case was initially denied because it appeared that Lim raised mixed questions of fact and law which should have been filed before the CA. After judicious

perusal of Lim's arguments, however, the Court ascertained that a reconsideration of its April 1, 2013 Resolution^[14] was in order.

It has been consistently held that only pure questions of law can be entertained in a petition for review under Rule 45 of the Rules of Court. In *Century Iron Works, Inc. v. Banas*,^[15] the Court held:

A petition for review on *certiorari* under Rule 45 is an appeal from a ruling of a lower tribunal on pure questions of law. It is only in exceptional circumstances that we admit and review questions of fact.

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.

Thus, **the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.**^[16] [Emphasis supplied]

Respondents argued that the initial denial of the petition was correct because Lim availed of the wrong mode of appeal. As the assailed judgment involved an intra-corporate dispute cognizable by the RTC, the appeal should have been filed before the CA, and not before this Court.

Doubtless, this case involves intra-corporate controversies and, thus, jurisdiction lies with the RTC, acting as a special commercial court. Section 5.2 of Republic Act No. 8799 (R.A. No. 8799)^[17] *effectively transferred to the appropriate RTCs jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A (P.D. No. 902-A), to wit:*

- a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission;
- b) **Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the**

state insofar as it concerns their individual franchise or right to exist as such entity; and

- c) **Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.** [Emphases supplied]

Pursuant to A.M. No. 04-9-07-SC, all decisions and final orders in cases falling under the Interim Rules of Corporate Rehabilitation and the Interim Rules of Procedure Governing Intra-Corporate Controversies shall be appealable to the CA through a petition for review under Rule 43 of the Rules of Court. Such petition shall be taken within fifteen (15) days from notice of the decision or final order of the RTC. ^[18]

In turn, Rule 43 governs the procedure for appeals from judgments or final orders of quasi-judicial agencies to the CA, whether it involves questions of fact, of law, or mixed questions of fact and law. Nevertheless, a party may directly file a petition for review on *certiorari* before the Court to question the judgment of a lower court, especially when the issue raised is purely of law and is one of novelty.

Substantive Issues

*Lim is still a member
of Condacor*

Respondents argued that Lim had no cause of action to file the subject action because she was no longer the owner of a condominium unit by virtue of a Deed of Assignment^[19] she executed in favor of Reynaldo Valera Lim and Dianna Mendoza Lim, her nephew and niece.

Section 90 of the Corporation Code states that membership in a non stock corporation and all rights arising therefrom are personal and non transferable, unless the articles of incorporation or the by-laws otherwise provide. A perusal of Condacor's By-Laws as regards membership and transfer of rights or ownership over the unit reveal that:

Membership in the CORPORATION is a mere appurtenance of the ownership of any unit in the CONDOMINIUM and may not therefore be sold, transferred or otherwise encumbered separately from the said unit. **Any member who sells or transfer his/her/its unit/s in the CONDOMINIUM shall automatically cease to be a member of the CORPORATION, the membership being automatically assumed by the buyer or transferee upon registration of the sale or transfer and ownership of the latter over the unit with the Register of Deeds for the City of Manila.**^[20] [Emphasis supplied.]

Likewise, the Master Deed of Condacor provides:

Section 11 : MORTGAGES, LIENS, LEASES, TRANSFERS OF RIGHTS AND SALE OF UNITS : All transactions involving the transfer of the ownership or occupancy of any UNIT, such as sale, transfer of rights or leases, as