

EN BANC

[A.M. OCA IPI No. 12-201-CA-J, February 19, 2013]

ETHELWOLDO E. FERNANDEZ, ANTONIO A. HENSON AND ANGEL S. ONG, COMPLAINANTS, VS. COURT OF APPEALS ASSOCIATE JUSTICES RAMON M. BATO, JR., ISAIAS P. DICDICAN AND EDUARDO B. PERALTA, JR., RESPONDENTS.

RESOLUTION

REYES, J.:

Before us is a verified Joint Complaint-Affidavit^[1] filed against Court of Appeals (CA) Associate Justices Ramon M. Bato, Jr. (Justice Bato), Isaias P. Dicdican (Justice Dicdican) and Eduardo B. Peralta, Jr. (Justice Peralta), all members of the former Special 14th Division, charging them with grave misconduct, conduct detrimental to the service, gross ignorance of the law, gross incompetence, and manifest partiality.

The complaint alleges that in a Resolution^[2] dated June 13, 2012, Justice Bato, who was designated on May 31, 2012 by raffle as acting senior member of the aforesaid Division, *vice* the regular senior member, Associate Justice Jane Aurora C. Lantion (Justice Lantion), who was scheduled to take a 15-day wellness leave from June 1-15, 2012, “usurped” the office of *ponente* in four (4) consolidated petitions before the CA, namely, CA-G.R. Nos. 122782, 122784, 122853, and 122854. Notwithstanding that the said cases have been previously assigned to Justice Lantion, Justice Bato acted on unverified motions to resolve the petitioners’ application for a writ of preliminary injunction, and granted the same, without conducting a prior hearing, with the connivance of the respondents as regular members of the Division; instead of the said regular members acting on the motions themselves.

Antecedent Facts

Complainants Ethelwoldo E. Fernandez (Fernandez) and Antonio A. Henson were elected in August 2010 to the Board of Directors (Board) of the Nationwide Development Corporation (NADECOR), a domestic corporation organized in 1956, which owns a gold-copper mining concession in Pantukan, Compostela Valley called *King-King Gold and Copper Mine* (King-King Mine), while complainant Angel S. Ong was among those elected to NADECOR’s Board at its stockholders’ meeting held on June 13, 2012.

At the regular annual stockholders’ meeting held on August 15, 2011, wherein 94% of NADECOR’s outstanding shares was represented and voted, two groups of stockholders were vying for control of the company, one group led by Jose G. Ricafort (JG Ricafort) who then personally controlled 42% of the issued shares, and the other group led by Conrado T. Calalang (Calalang), who owned 33%. Elected to

the Board were Calalang, Jose, Jose P. De Jesus (De Jesus), Roberto R. Romulo (Romulo), Alfredo I. Ayala (Ayala), Victor P. Lazatin, Fernandez, Leocadio Nitorreda (Nitorreda), and John Engle (Engle). Later elected as Corporate Secretary was Luis Manuel L. Gatmaitan (Gatmaitan).

On October 20, 2011, two months after the August 15, 2011 stockholders' meeting, Corazon H. Ricafort (CH Ricafort), Jose Manuel H. Ricafort (JM Ricafort), Marie Grace H. Ricafort (MG Ricafort), and Maria Teresa R. Santos (MT Santos) (plaintiffs Ricafort), wife and children of JG Ricafort, claiming to be stockholders of record, sought to annul the said meeting by filing SEC Case No. 11-164 in the Regional Trial Court (RTC) of Pasig City, Branch 159. Impleaded as defendants were NADECOR, the members of the incumbent Board, and the Corporate Secretary, Gatmaitan.

The plaintiffs Ricafort alleged that they were not given prior notice of the August 15, 2011 stockholders' meeting, and thus failed to attend the same and to exercise their right to participate in the management and control of NADECOR; that they were served with notice only on August 16, 2011, a day after the meeting was held, in violation of the 3-day prior notice provided in NADECOR's Bylaws; and that moreover, the notice announced a time and venue of the meeting different from those set forth in the Bylaws. The plaintiffs Ricafort therefore asked the RTC to declare null and void the August 15, 2011 annual stockholders' meeting, including all proceedings taken thereat, all the consequences thereof, and all acts carried out pursuant thereto.

On November 18, 2011, Gatmaitan filed his Answer to the complaint in SEC Case No. 11-164; Calalang, Romulo, Ayala, Fernandez, Engle and Nitorreda filed theirs on November 21, 2011; and NADECOR filed its Answer on November 23, 2011. On November 30, 2011, the plaintiffs Ricafort filed their Answer to the Compulsory Counterclaims.

In the Order dated December 21, 2011, the RTC agreed with the plaintiffs Ricafort that they were not given due notice of the annual stockholders' meeting of NADECOR, and that their complaint did not involve an election contest, and therefore was not subject to the 15-day prescriptive period to file an election protest.^[3] The *fallo* of the Order reads, as follows:

IN VIEW OF THE FOREGOING, this Court **GRANTS**, as it hereby **GRANTS** the relief prayed for in the Complaint and DEN[IES] all compulsory counterclaims for lack of merit. Consequently, Nationwide Development Corporation's 2011 Annual Stockholders' Meeting held on August 15, 2011 is hereby declared NULL and VOID, including ALL matters taken up during said Annual Stockholders' Meeting. Any other acts, decisions, deeds, incidents, matters taken up arising from and subsequent to the 2011 Annual Stockholders' Meeting are hereby likewise declared **VOID and OF NO FORCE and EFFECT**.

Defendant Nationwide Development Corporation is hereby directed to: (a) issue a new notice to all stockholders for the conduct of an annual stockholders' meeting corresponding to the year 2011 since the annual stockholders' meeting held on August 15, 2011 was declared VOID, ensuring their receipt within three (3) days from the intended date of the

annual meeting[;] and (b) hold the annual stockholders meeting within thirty (30) days from receipt of this Order.

No pronouncements as to cost.

SO ORDERED.^[4] (Citation omitted and italics, and emphasis in the original)

Four separate petitions for *certiorari* were forthwith filed in the CA by some members of the new Board and by NADECOR to assail the validity of the RTC order, all with application for a temporary restraining order (TRO) and/or a writ of preliminary injunction, namely:

(a) **CA-G.R. SP No. 122782** - filed on January 5, 2012 by Director Romulo versus CH Ricafort, JM Ricafort, MG Ricafort and MT Santos (respondents Ricafort). The case was raffled to Justice Lantion, senior member of the 15th Division; the chairman of the Division was Justice Dicdican, while Justice Angelita A. Gacutan (Justice Gacutan) was the junior member.

(b) **CA-G.R. SP No. 122784** - filed on January 5, 2012 by Directors Calalang, Ayala, Engle and Nitorreda versus the respondents Ricafort. Justice Agnes Reyes-Carpio (Justice Reyes-Carpio) of the 11th Division was the *ponente*.

(c) **CA-G.R. SP No. 122853** - filed on January 6, 2012 by NADECOR versus the respondents Ricafort. Justice Samuel Gaerlan of the 6th Division was the *ponente*.

(d) **CA-G.R. SP No. 122854** - filed on January 6, 2012 by Gatmaitan versus the respondents Ricafort. Justice Rosalinda Asuncion-Vicente of the 9th Division was the *ponente*.

On January 16, 2012, the 15th Division of the CA denied the application for TRO and/or preliminary injunction in CA-G.R. SP No. 122782. On the same day, however, the 11th Division issued a TRO in CA-G.R. SP No. 122784,^[5] stating that the three (3) conditions for the issuance of an injunctive relief were present in the said petition, namely: (a) the right to be protected exists *prima facie*; (b) the act sought to be enjoined is violative of that right; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage. The *fallo* of the Resolution of the 11th Division reads:

WHEREFORE, in view of the foregoing, pending the determination by this Court of the merits of the Petition, the Court **GRANTS** petitioners' prayer for the issuance of a temporary restraining order (TRO), to prevent the implementation and execution of the assailed Order dated December 21, 2011 of the Regional Trial Court, Branch 159, Pasig City.

The **TRO** is conditioned upon the filing by the petitioners of the **bond** in the amount of **ONE HUNDRED THOUSAND ([P]100,000.00) PESOS** each, which shall answer for whatever damages that [respondents Ricafort] may incur in the event that the Court finds petitioners not entitled to the injunctive relief issued. The **TRO** shall be **effective for sixty (60) days** upon posting of the required bond unless earlier lifted or dissolved by the Court.

During the effectivity of the TRO, the Board of Directors elected and serving before the August 15, 2011 Stockholders['] Meeting shall discharge their functions as Directors in a hold-over capacity in order to prevent any hiatus and so as not to unduly prejudice the corporation.

Respondents are **REQUIRED** to submit their Comment to petitioners' Petition and why a writ of preliminary injunction should not be issued within **TEN (10) days** from notice, and petitioners, their Reply thereon, within **FIVE (5) days** from receipt of the said Comment.

SO ORDERED.^[6]

In light of the declaration by the RTC that the August 15, 2011 stockholders' meeting was "VOID and OF NO FORCE and EFFECT," the 11th Division ordered the preceding Board, elected in August 2010 (Old Board) to take over the company in a hold-over capacity during the effectivity of the TRO, "to prevent any hiatus and so as not to unduly prejudice the corporation," and until a new Board was elected in a stockholders' meeting to be called by the Old Board. The new Board, which entered into its duties on August 15, 2011 (New Board), had to cease acting and give way to the hold-over Board.

On February 8, 2012, the 15th Division ordered the consolidation of all four CA petitions. On February 24, 2012, the 9th Division also ordered the consolidation of CA-G.R. SP No. 122854 with CA-G.R. SP No. 122782. On March 9, 2012, the 11th Division approved the consolidation of CA-G.R. SP CA-G.R. No. 122784 with CA-G.R. SP No. 122782. The assailed Resolution^[7] dated June 13, 2012 of the Special 14th CA Division includes in its caption CA-G.R. SP No. 122853, implying that the 6th Division had also agreed to the consolidation.

On February 17, 2012, the respondents Ricafort filed their **Comment Ad Cautelam**^[8] to the petition in CA-G.R. No. 122784. The petitioners thereafter filed three (3) urgent motions to resolve their application for writ of preliminary injunction, on March 8,^[9] on May 22,^[10] and again on June 6, 2012^[11]. However, after the lapse of the 60-day TRO but before the CA could resolve the application for writ of preliminary injunction, Deogracias G. Contreras, Corporate Secretary of the Old Board who replaced Gatmaitan, issued on June 6, 2012 a Notice of Annual Stockholders' Meeting to be held at the Jollibee Centre in Ortigas on June 13, 2012 at 12:30 p.m. The notice was published on June 7, 2012 in *The Philippine Star*,^[12] and two of the main purposes of the meeting were:

(a) The ratification of the rescission by the Old Board of NADECOR's Memoranda of Understanding (MOUs) with the *St. Augustine Gold & Copper Ltd. and the St. Augustine Mining, Ltd.*, (St. Augustine), both dated April 27, 2010; and

(b) The ratification of the sale of unissued shares of NADECOR comprising 25% of its authorized capital stock (for P1.8 billion) to a new investor, Queensberry Mining and Development Corporation (Queensberry), later disclosed as controlled by the Group of Senator Manuel Villar.

On the same day, the petitioners in CA-G.R. SP No. 122784 filed a Supplement to the Third Urgent Motion to Resolve with Manifestation^[13] dated June 7, 2012, contending that the rescission of NADECOR's MOUs with St. Augustine would result in grave and irreparable injury to it since St. Augustine alone had the financial and technical capability to develop its 1,656-hectare area mining claim in Pantukan, Compostela Valley. NADECOR thus risked having its Mineral Production Sharing Agreement (MPSA) with the government, its only valuable asset, revoked by the Department of Environment and Natural Resources (DENR).

On June 13, 2012 at 12:30 p.m., the announced annual meeting of NADECOR's stockholders was held at the Jollibee Center in Ortigas as scheduled, with Calalang chosen as presiding officer. Midway through the meeting, however, Calalang received a facsimile copy of the now assailed Resolution of the CA's Special 14th Division, bearing the day's date. On motion, Calalang declared the meeting adjourned in view of the injunctive writ granted by the CA. But he was overruled by the stockholders and directors holding 64% of the shares, and Calalang and his group walked out of the assembly. The stockholders who remained in the meeting ignored the writ and the meeting resumed, with President De Jesus now presiding. In the meeting, the following were taken up: the election of the new Board; the ratification of the rescission by the Old Board of NADECOR's MOUs with the St. Augustine; and the ratification of the subscription of Queensberry to 25% of the capital stock of NADECOR.

The Writ of Preliminary Injunction

The assailed Resolution of the Special 14th Division of the CA granting the writ of preliminary injunction reads:

WHEREFORE, premises considered, the application for a writ of preliminary injunction is **GRANTED**. Let a writ of preliminary injunction be issued enjoining the implementation of the Order dated December 21, 2011 of the Regional Trial Court of Pasig City, Branch 159 and allowing the Board of Directors elected during the August 15, 2011 [stockholders' meeting] to continue to act as Board of Directors of NADECOR.

Likewise, the parties, including the hold-over Board of Directors elected and acting before the August 15, 2011 Stockholders' Meeting are enjoined and prohibited from acting as hold-over board and from scheduling and holding any stockholders' meeting, including the scheduled June 13, 2012 stockholders' meeting. Any effects of said June 13, 2012 stockholders' meeting, including the ratification of the