

## THIRD DIVISION

[ G.R. No. 201760, September 16, 2013 ]

**LBL INDUSTRIES, INC., PETITIONER, VS. CITY OF LAPU-LAPU,  
RESPONDENT.**

### D E C I S I O N

**VELASCO JR., J.:**

#### **The Case**

Before Us is a Petition for Review on Certiorari under Rule 45, assailing and seeking the annulment of the Resolution of the Court of Appeals (CA) dated July 11, 2011 in CA-G.R. SP No. 05877 as well as its Resolution dated April 19, 2012 denying reconsideration of the first assailed issuance.

#### **The Facts**

Petitioner is the registered owner of a 40,634-square meter parcel of land. Lot No. 4839, situated in Mactan, Lapu-Lapu City and covered by Transfer Certificate of Title (TCT) No. 34555.

On January 25, 2006, respondent City of Lapu-Lapu (respondent) filed a complaint<sup>[1]</sup> before the Regional Trial Court seeking to expropriate, among others, a 300-square meter portion of Lot No. 4839 for its road opening project from Saac II to Bag-ong Silangan, Mactan, Lapu-Lapu City. Later, or on February 19, 2006, the complaint was amended, captioned as "Second Amended Complaint," increasing the area sought to be appropriated to 2,750 sq.m.

Upon deposit of an amount equivalent to 15% of the fair market value of the property based on the current tax declaration, respondent took possession of and utilized the property. On February 28, 2006, petitioner filed its Answer, accompanied by a Secretary's Certificate, which states, in part:

That at the Special Meeting of the Board of the Corporation on February 14, 2006, the following resolution had been adopted and approved[,] to wit:

"RESOLVED, as it is hereby resolved, to authorize **ELSIE TAN MARIÑO** [Mariño], an officer of the corporation, to commence any action for and in behalf of the corporation as she may deem fit and necessary to do any and all acts that may be essential in the prosecution and defense of the cases of the corporation[,] more particularly involving and in connection with the Eminent Domain case filed by the City of Lapu-Lapu[,] including the execution/signing and verification of the

Answer of other necessary pleadings[,] and do such other acts necessary and proper in connection therewith."<sup>[2]</sup>

Meanwhile, petitioner interposed a Motion to Conduct Joint Survey and Set Case for Pre-trial.

Later, or on March 3, 2006, petitioner filed its Answer to the Amended and Second Amended Complaint.

Meantime, the RTC issued two Orders, dated July 10, 2006 and March 28, 2007, directing the issuance of a writ of possession. The branch clerk of court, however, failed to comply with any of the orders.<sup>[3]</sup>

A year later, or on January 25, 2008, petitioner moved for the dismissal of the case on the ground that respondent failed to prosecute the case for an unreasonable length of time as provided for under Section 3, Rule 17 of the Rules of Court. According to petitioner, respondent has yet to move for the setting of the case for pre-trial and it had done nothing to ensure compliance with the Orders for the issuance of the writ of execution. Respondent opposed the motion, explaining that the reason for the delay was that it is awaiting the RTC's resolution on the motion filed by petitioner for the conduct of a joint survey and for the setting of the case for pre-trial. Petitioner filed a Reply to respondent's Opposition and Comment on the Motion to Dismiss on February 14, 2008.

In its Order<sup>[4]</sup> dated February 18, 2008 denying the motion to dismiss, the RTC ruled that respondent cannot be faulted for the alleged delay in prosecuting the case as, indeed, petitioner's motion for the conduct of a joint survey and for the setting of the case for trial had not yet been resolved. And as an additional reason for its action, the RTC cited the non-observance of the three (3)-day notice rule noting that the motion to dismiss was received by the plaintiff on January 31, 2008, but the motion was set for hearing on the following day, or on February 1, 2008. The *fallo* of the Order reads:

WHEREFORE, premises considered, the Motion to Dismiss is denied.

Plaintiff [respondent] is directed to prosecute this case within thirty (30) days from receipt of this order.

Furnish copies of this order to counsels.

SO ORDERED.

Petitioner's motion for reconsideration of the RTC's February 18, 2008 Order was likewise denied in that court's January 26, 2011 Order,<sup>[5]</sup> the dispositive portion of which states:

**WHEREFORE PREMISES CONSIDERED**, the motion for reconsideration is hereby DENIED.

For the third time, the Branch Clerk of Court is hereby directed to issue a writ of possession.

Furnish copy of this order to counsels.

**SO ORDERED.**

In the latter Order, the RTC attributed the fault to its branch clerk of court for failing to comply with its twin orders directing the issuance of a writ of possession.

On April 15, 2011, petitioner went to the CA on a Petition for Certiorari under Rule 65 assailing the said February 18, 2008 and January 26, 2011 Orders of the trial court, the recourse docketed as CA-G.R. SP. No. 05877. Attached to the petition is a Secretary's Certificate executed on April 12, 2011, by Elsie T. Mariño, petitioner's assistant corporate secretary. Said certificate states, among others, that at the special meeting of petitioner's board on April 8, 2011, the following resolution was adopted:

RESOLVED, as it is hereby resolved, to authorize **Mr. Roberto Z. Sison** [Sison] or **Ms. Elsie T. Mariño**, to commence any action and. or represent the corporation as he/she may deem fit and necessary and to do any and all acts that may be essential in the prosecution and defense of the cases of the corporation more particularly involving the **Complaint for Eminent Domain filed with the RTC of Lapu-Lapu City**, any proceedings for just compensation for its lots in Lapu-Lapu City including the execution/signing and verification of the necessary documents and do such other acts necessary and proper in connection therewith.<sup>[6]</sup>

**CA Ruling**

The CA dismissed the petition in its July 11, 2011 Resolution<sup>[7]</sup> owing to the following infirmities, viz:

1. a One Hundred and Fifty Peso (PhP 150) deficiency in docket fees;
2. the absence of the serial number, as well as the province or city of commission of the Notary Public in the Notarial Certificate of the Verification and Certification of Non-Forum Shopping
3. lack of proper proof of service; and
4. **absence of a board resolution evincing the authority of Roberto Sison, petitioner's Chief Operating Officer, to represent it in the case.**

The *fallo* of the CA's July 11, 2011 Resolution reads as follows:

In view of the foregoing premises, petitioners' Petition for Certiorari dated April 11, 2011 is hereby **DISMISSED**.

**SO ORDERED.**

As regards the absence of a board resolution, the CA held that "the Petition is subject to dismissal if a certification was submitted unaccompanied by proof of the signatory's authority."<sup>[8]</sup> Petitioner, thus, moved for reconsideration, offering explanations for the defects cited by the CA including the absence of the board

resolution.

### **CA Ruling on Motion for Reconsideration**

The appellate court, in its April 19, 2012 Resolution, accepted petitioner's explanation as regards the first three (3) defects but ruled that the person signing the petition lacked authority to do so because the Secretary's Certificate appended to the petition is insufficient proof of said authority. The CA ruled that the failure to attach the Board Resolution for the filing of the Petition was fatal x x x.<sup>[9]</sup> In disposing of the case, the CA stated:

WHEREFORE, in view of the foregoing premises, petitioner's Motion for Reconsideration dated August 10, 2011, is hereby **DENIED**.

**SO ORDERED.**<sup>[10]</sup>

### **The Issues**

Petitioner now comes before this Court assailing the foregoing Resolutions of the CA and raising the following issues, to wit:

- I. [WHETHER THE CA] SERIOUSLY ERRED IN HOLDING THAT THE SECRETARY'S CERTIFICATE EXECUTED BY ASSISTANT CORPORATE SECRETARY ELSIE T. MARIÑO AUTHORIZING ROBERTO Z. SISON TO ACT FOR AND ON BEHALF OF THE PETITIONER CORPORATION IN FILING THE PETITION FOR CERTIORARI DOES NOT CONSTITUTE SUFFICIENT PROOF OF [SISON'S] AUTHORITY TO REPRESENT THE CORPORATION.
- II. [WHETHER THE CA] SERIOUSLY ERRED IN DISMISSING THE CASE BASED ON A TECHNICALITY WHEN PETITIONER HAS SUBSTANTIALLY RAISED VALID GROUNDS TO SET ASIDE THE ORDERS OF THE TRIAL COURT DENYING PETITIONER'S MOTION TO DISMISS THE CASE FOR FAILURE OF THE RESPONDENT TO PROSECUTE THE CASE FOR AN UNREASONABLE LENGTH OF TIME.

<sup>[11]</sup>

Accompanying the Petition is a copy of the April 8, 2011 Minutes of the Special Meeting of the Board of Directors of petitioner authorizing Sison to represent petitioner in the expropriation case.<sup>[12]</sup>

### **The Court's Ruling**

The petition is partly meritorious.

On the first issue, petitioner argues that the Secretary's Certificate executed by Assistant Corporate Secretary Marina—reflecting the Board's resolution that authorized its Chief Operating Officer, Sison, to file the Petition for Certiorari under Rule 65 with the CA—is sufficient proof of authority. We agree.

The Court, in several cases, has recognized the sufficiency of a Secretary's Certificate as proof of authority for an individual named in it to represent a