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FIRST DIVISION

[G.R. No. 119877, March 31, 1997]

BIENVENIDO ONGKINGCO, AS PRESIDENT AND GALERIA DE MAGALLANES CONDOMINIUM ASSOCIATION, INC., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND FEDERICO B. GUILAS, RESPONDENTS.

D E C I S I O N

KAPUNAN, J.:

At fore, once again, is the jurisdictional tug of war between the National Labor Relations Commission (NLRC) and the Securities & Exchange Commission (SEC) in this special civil action for certiorari under Rule 65 of the Revised Rules of Court. It seeks to set aside the Resolutions of the NLRC in NLRC NCR Case No. 00-05-02780-92 (NLRC CA No. 004329-93) dated 9 March 1995 and 4 April 1995 which reversed the decision of Labor Arbiter Oswald Lorenzo and denied petitioners' motion for reconsideration, respectively.

Petitioner Galeria de Magallanes Condominium Association, Inc. (Galeria for brevity) is a non-stock, non-profit corporation formed in accordance with R.A. No. 4726, otherwise known as the Condominium Act. "Its primary purpose is to hold title to the common areas of the Galeria de Magallanes Condominium Project and to manage and administer the same for the use and convenience of the residents and/or owners."[1] Petitioner Bienvenido Ongkingco was the president of Galeria at the time private respondent filed his complaint.

On 1 September 1990, Galeria's Board of Directors appointed private respondent Federico B. Guilas as Administrator/Superintendent. He was given a "monthly salary of P10,000 subject to review after five (5) months and subsequently thereafter as Galeria's finances improved."[2]

As Administrator, private respondent was tasked with the maintenance of the "performance and elegance of the common areas of the condominium and external appearance of the compound thereof for the convenience and comfort of the residents as well as to keep up the quality image, and hence the value of the investment for the owners thereof."[3]

However, on 17 March 1992, through a resolution passed by the Board of Directors of Galeria, private respondent was not re-appointed as Administrator.

As a result, on 15 May 1992, private respondent instituted a complaint against petitioners for illegal dismissal and non-payment of salaries with the NLRC.

In response, on 22 July 1992, petitioners filed a motion to dismiss alleging that it is the SEC, and not the labor arbiter, which has jurisdiction over the subject matter of the complaint.

Labor Arbiter Lorenzo granted the aforestated motion to dismiss in his order dated 29 December 1992. He ruled, thus:

> A judicious calibration of the position taken by the contending parties preponderate clearly in favor of respondents, that this case is within the jurisdiction of the Securities and Exchange Commission and not this Office (Labor Arbiter).
>
> Our reasons are as follows:

ONE. The Position of Administrator or Superintendent is a corporate position, whose appointment depended on the Board of Directors. As such, the position of the administrator is a corporate creation.

TWO. Clearly from the respondent corporation's Articles of Incorporation, Art. V, Sec. 6 thereof, the appointment and removal of the administrator is a prerogative that belongs to the Board, and thereby involves the exercise of deliberate choice and faculty of discriminative selection.

THIRD. Thus, we find lacking of merit the argument of complainant that since he is not a member of the condominium association where he was formerly administrator, or is not a unit holder thereof, since a person's relationship to a corporation is not determinative of the services performed but by the incidents of the relationship as they exist. (PSBA vs. LEANO, 127 SCRA 778.)

> The resolution, therefore, of the other pending incident, which is the MOTION FOR SUBSTITUTION OF PARTIES is hereby deferred for action by the SEC.
>
> WHEREFORE, in view of all the foregoing considerations, this Office hereby orders the dismissal of the instant action for reason of lack of jurisdiction. The complainant, if he is mindful should file this case with the Securities and Exchange Commission.
>
> SO ORDERED.[4]

The NLRC, however, reversed the Labor Arbiter's order in its resolution dated 9 March 1995. It ruled in this wise:

> We find merit in the appeal. It cannot be gainsaid that the complainant's cause of action in his complaint is illegal dismissal which issue falls four square within the jurisdiction of the NLRC. This is so, because while it may be true that the termination of the complainant was effected allegedly by a resolution of the Board of Directors of the respondent association, this did not make the dispute intracorporate in nature. Moreover, We have taken note of the fact that the complainant is neither a member of the association nor an officer thereof. Hence, We are more convinced that he is an employee of the respondent association occupying the position of administrator who is in (sic) charged with the function of managing and administering the building or condominium owned by the members. Indeed, there is a whale of difference between a

> member of the association who is a part owner of the building and a mere employee performing managerial and administrative functions which are necessary in the usual undertaking of the respondent Association. The complainant falls under the second category.
>
> And, to the point of being repetitious, it needs to be stressed that the fact that the complainant was removed by the Board of Directors did not change the issue from an illegal dismissal case to an intracorporate one. For, what remains to be resolved here is whether or not the complainant's removal from his position as Administrator was for a just and valid cause and in compliance with due process. And, as the facts now stand, the issue is within the scope of authority of the National Labor Relations Commission to resolve.
>
> We simply could not agree with the conclusions of law made by the Arbiter a quo on the applicability of the provisions of P.D. 902. Our view finds basis in the case of Gregorio Araneta University Foundation vs. Antonio J. Teodoro and NLRC (167 SCRA 79) wherein the Supreme Court had the occasion to clarify the jurisdiction of the Securities and Exchange Commission and that of the NLRC. It (Supreme Court) held, thus—

"x x x Relying on Philippine School of Business Administration, et al., (127 SCRA 778) and Dy, et al., vs. National Labor Relations Commission, et al., (145 SCRA 211), Petitioner theorizes that since private respondent was a corporate officer, the present controversy is within the jurisdiction of the Securities and Exchange Commission, pursuant to P.D. 902-A, and not in the public respondent.

Without need of applying the rule on estoppel by laches against petitioner, its contention must fail on the ground of misplaced reliance. As explained in Dy, the same is true with Philippine Business Administration, the controversies therein were intra corporate in nature and squarely within the purview of Section 5(c), PD. 902-A since the real question was the invalidity of the board of director's meeting wherein corporate officers involved were not re-elected, resulting in the termination of their services." (Underscoring ours.)

> As obtaining in this case, no intracorporate controversy exists, hence, the jurisdiction of the NLRC should be sustained.
>
> WHEREFORE, finding merit on the appeal, the same is hereby, given due course. Accordingly, the Order appealed from is declared Null and Void and is hereby, VACATED and SET ASIDE. Accordingly, let the records of the case be remanded to the Arbitration Branch of origin for further proceedings. With the directive that the instant case be given priority in the calendar of the Labor Arbiter for the speedy disposition hereon. Concomitant hereto, the respondents are hereby directed to submit their position paper within ten (10) days from receipt hereof.
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> SO ORDERED.[5]

Petitioners filed a motion for reconsideration but the same was denied in the NLRC's resolution dated 4 April 1995.[6] Hence, the present recourse.