

SECOND DIVISION

[G.R. No. 117188, August 07, 1997]

LOYOLA GRAND VILLAS HOMEOWNERS (SOUTH) ASSOCIATION, INC., PETITIONER, VS. HON. COURT OF APPEALS, HOME INSURANCE AND GUARANTY CORPORATION, EMDEN ENCARNACION AND HORATIO AYCARD, RESPONDENTS.

DECISION

ROMERO, J.:

May the failure of a corporation to file its by-laws within one month from the date of its incorporation, as mandated by Section 46 of the Corporation Code, result in its automatic dissolution?

This is the issue raised in this petition for review on certiorari of the Decision^[1] of the Court of Appeals affirming the decision of the Home Insurance and Guaranty Corporation (HIGC). This quasi-judicial body recognized Loyola Grand Villas Homeowners Association (LGVHA) as the sole homeowners' association in Loyola Grand Villas, a duly registered subdivision in Quezon City and Marikina City that was owned and developed by Solid Homes, Inc. It revoked the certificates of registration issued to Loyola Grand Villas Homeowners (North) Association Incorporated (the North Association for brevity) and Loyola Grand Villas Homeowners (South) Association Incorporated (the South Association).

LGVHAI was organized on February 8, 1983 as the association of homeowners and residents of the Loyola Grand Villas. It was registered with the Home Financing Corporation, the predecessor of herein respondent HIGC, as the sole homeowners' organization in the said subdivision under Certificate of Registration No. 04-197. It was organized by the developer of the subdivision and its first president was Victorio V. Soliven, himself the owner of the developer. For unknown reasons, however, LGVHAI did not file its corporate by-laws.

Sometime in 1988, the officers of the LGVHAI tried to register its by-laws. They failed to do so.^[2] To the officers' consternation, they discovered that there were two other organizations within the subdivision – the North Association and the South Association. According to private respondents, a non-resident and Soliven himself, respectively headed these associations. They also discovered that these associations had five (5) registered homeowners each who were also the incorporators, directors and officers thereof. None of the members of the LGVHAI was listed as member of the North Association while three (3) members of LGVHAI were listed as members of the South Association.^[3] The North Association was registered with the HIGC on February 13, 1989 under Certificate of Registration No. 04-1160 covering Phases West II, East III, West III and East IV. It submitted its by-laws on December 20, 1988.

In July, 1989, when Soliven inquired about the status of LGVHAI, Atty. Joaquin A. Bautista, the head of the legal department of the HIGC, informed him that LGVHAI had been automatically dissolved for two reasons. First, it did not submit its by-laws within the period required by the Corporation Code and, second, there was non-user of corporate charter because HIGC had not received any report on the association's activities. Apparently, this information resulted in the registration of the South Association with the HIGC on July 27, 1989 covering Phases West I, East I and East 11. It filed its by-laws on July 26, 1989.

These developments prompted the officers of the LGVHAI to lodge a complaint with the HIGC. They questioned the revocation of LGVHAI's certificate of registration without due notice and hearing and concomitantly prayed for the cancellation of the certificates of registration of the North and South Associations by reason of the earlier issuance of a certificate of registration in favor of LGVHAI.

On January 26, 1993, after due notice and hearing, private respondents obtained a favorable ruling from HIGC Hearing Officer Danilo C. Javier who disposed of HIGC Case No. RRM-5-89 as follows:

WHEREFORE, judgment is hereby rendered recognizing the Loyola Grand Villas Homeowners Association, Inc., under Certificate of Registration No. 04-197 as the duly registered and existing homeowners association for Loyola Grand Villas homeowners, and declaring the Certificates of Registration of Loyola Grand Villas Homeowners (North) Association, Inc. and Loyola Grand Villas Homeowners (South) Association, Inc. as hereby revoked or cancelled; that the receivership be terminated and the Receiver is hereby ordered to render an accounting and turn-over to Loyola Grand Villas Homeowners Association, Inc., all assets and records of the Association now under his custody and possession."

The South Association appealed to the Appeals Board of the HIGC. In its Resolution of September 8, 1993, the Board^[4] dismissed the appeal for lack of merit.

Rebuffed, the South Association in turn appealed to the Court of Appeals, raising two issues. First, whether or not LGVHAI's failure to file its by-laws within the period prescribed by Section 46 of the Corporation Code resulted in the automatic dissolution of LGVHAI. Second, whether or not two homeowners' associations may be authorized by the HIGC in one "sprawling subdivision." However, in the Decision of August 23, 1994 being assailed here, the Court of Appeals affirmed the Resolution of the HIGC Appeals Board.

In resolving the first issue, the Court of Appeals held that under the Corporation Code, a private corporation commences to have corporate existence and juridical personality from the date the Securities and Exchange Commission (SEC) issues a certificate of incorporation under its official seal. The requirement for the filing of by-laws under Section 46 of the Corporation Code within one month from official notice of the issuance of the certificate of incorporation presupposes that it is already incorporated, although it may file its by-laws with its articles of incorporation. Elucidating on the effect of a delayed filing of by-laws, the Court of Appeals said:

We also find nothing in the provisions cited by the petitioner, i.e., Sections 46 and 22, Corporation Code, or in any other provision of the Code and other laws which provide or at least imply that failure to file the by-laws results in an automatic dissolution of the corporation. While Section 46, in prescribing that by-laws must be adopted within the period prescribed therein, may be interpreted as a mandatory provision, particularly because of the use of the word 'must,' its meaning cannot be stretched to support the argument that automatic dissolution results from non-compliance.

We realize that Section 46 or other provisions of the Corporation Code are silent on the result of the failure to adopt and file the by-laws within the required period. Thus, Section 46 and other related provisions of the Corporation Code are to be construed with Section 6 (1) of P.D. 902-A. This section empowers the SEC to suspend or revoke certificates of registration on the grounds listed therein. Among the grounds stated is the failure to file by-laws (see also II Campos: The Corporation Code, 1990 ed., pp. 124-125). Such suspension or revocation, the same section provides, should be made upon proper notice and hearing. Although P.D. 902-A refers to the SEC, the same principles and procedures apply to the public respondent HIGC as it exercises its power to revoke or suspend the certificates of registration or homeowners associations. (Section 2 [a], E.O. 535, series 1979, transferred the powers and authorities of the SEC over homeowners associations to the HIGC.)

We also do not agree with the petitioner's interpretation that Section 46, Corporation Code prevails over Section 6, P.D. 902-A and that the latter is invalid because it contravenes the former. There is no basis for such interpretation considering that these two provisions are not inconsistent with each other. They are, in fact, complementary to each other so that one cannot be considered as invalidating the other."

The Court of Appeals added that, as there was no showing that the registration of LGVHAI had been validly revoked, it continued to be the duly registered homeowners' association in the Loyola Grand Villas. More importantly, the South Association did not dispute the fact that LGVHAI had been organized and that, thereafter, it transacted business within the period prescribed by law.

On the second issue, the Court of Appeals reiterated its previous ruling^[5] that the HIGC has the authority to order the holding of a referendum to determine which of two contending associations should represent the entire community, village or subdivision.

Undaunted, the South Association filed the instant petition for review on certiorari. It elevates as sole issue for resolution the first issue it had raised before the Court of Appeals, i.e., whether or not the LGVHAI's failure to file its by-laws within the period prescribed by Section 46 of the Corporation Code had the effect of automatically dissolving the said corporation.

Petitioner contends that, since Section 46 uses the word "must" with respect to the filing of by-laws, noncompliance therewith would result in "self-extinction" either due to non-occurrence of a suspensive condition or the occurrence of a resolatory

condition "under the hypothesis that (by) the issuance of the certificate of registration alone the corporate personality is deemed already formed." It asserts that the Corporation Code provides for a "gradation of violations of requirements." Hence, Section 22 mandates that the corporation must be formally organized and should commence transactions within two years from date of incorporation. Otherwise, the corporation would be deemed dissolved. On the other hand, if the corporation commences operations but becomes continuously inoperative for five years, then it may be suspended or its corporate franchise revoked.

Petitioner concedes that Section 46 and the other provisions of the Corporation Code do not provide for sanctions for non-filing of the by-laws. However, it insists that no sanction need be provided "because the mandatory nature of the provision is so clear that there can be no doubt about its being an essential attribute of corporate birth." To petitioner, its submission is buttressed by the facts that the period for compliance is "spelled out distinctly;" that the certification of the SEC/HIGC must show that the by-laws are not inconsistent with the Code, and that a copy of the by-laws "has to be attached to the articles of incorporation." Moreover, no sanction is provided for because "in the first place, no corporate identity has been completed." Petitioner asserts that "non-provision for remedy or sanction is itself the tacit proclamation that non-compliance is fatal and no corporate existence had yet evolved," and therefore, there was "no need to proclaim its demise."^[6] In a bid to convince the Court of its arguments, petitioner stresses that:

"x x x the word MUST is used in Sec. 46 in its universal literal meaning and corollary human implication – its compulsion is integrated in its very essence – MUST is always enforceable by the inevitable consequence – that is, 'OR ELSE'. The use of the word MUST in Sec. 46 is no exception – it means file the by-laws within one month after notice of issuance of certificate of registration OR ELSE. The OR ELSE, though not specified, is inextricably a part of MUST. Do this or if you do not you are 'Kaput'. The importance of the by-laws to corporate existence compels such meaning for as decreed the by-laws is 'the government' of the corporation. Indeed, how can the corporation do any lawful act as such without by-laws. Surely, no law is intended to create chaos."^[7]

Petitioner asserts that P.D. No. 902-A cannot exceed the scope and power of the Corporation Code which itself does not provide sanctions for non-filing of by-laws. For the petitioner, it is "not proper to assess the true meaning of Sec. 46 x x x on an unauthorized provision on such matter contained in the said decree."

In their comment on the petition, private respondents counter that the requirement of adoption of by-laws is not mandatory. They point to P.D. No. 902-A as having resolved the issue of whether said requirement is mandatory or merely directory. Citing *Chung Ka Bio v. Intermediate Appellate Court*,^[8] private respondents contend that Section 6(I) of that decree provides that non-filing of by-laws is only a ground for suspension or revocation of the certificate of registration of corporations and, therefore, it may not result in automatic dissolution of the corporation. Moreover, the adoption and filing of by-laws is a condition subsequent which does not affect the corporate personality of a corporation like the LGVHAI. This is so because Section 9 of the Corporation Code provides that the corporate existence and juridical personality of a corporation begins from the date the SEC issues a certificate of incorporation under its official seal. Consequently, even if the by-laws have not yet

been filed, a corporation may be considered a de facto corporation. To emphasize the fact the LGVHAI was registered as the sole homeowners' association in the Loyola Grand Villas, private respondents point out that membership in the LGVHAI was an "unconditional restriction in the deeds of sale signed by lot buyers."

In its reply to private respondents' comment on the petition, petitioner reiterates its argument that the word "must" in Section 46 of the Corporation Code is mandatory. It adds that, before the ruling in *Chung Ka Bio v. Intermediate Appellate Court* could be applied to this case, this Court must first resolve the issue of whether or not the provisions of P.D. No. 902-A prescribing the rules and regulations to implement the Corporation Code can "rise above and change" the substantive provisions of the Code.

The pertinent provision of the Corporation Code that is the focal point of controversy in this case states:

Sec. 46. *Adoption of by-laws.* – Every corporation formed under this Code, must within one (1) month after receipt of official notice of the issuance of its certificate of incorporation by the Securities and Exchange Commission, adopt a code of by-laws for its government not inconsistent with this Code. For the adoption of by-laws by the corporation, the affirmative vote of the stockholders representing at least a majority of the outstanding capital stock, or of at least a majority of the members, in the case of non-stock corporations, shall be necessary. The by-laws shall be signed by the stockholders or members voting for them and shall be kept in the principal office of the corporation, subject to the stockholders or members voting for them and shall be kept in the principal office of the corporation, subject to inspection of the stockholders or members during office hours; and a copy thereof, shall be filed with the Securities and Exchange Commission which shall be attached to the original articles of incorporation.

Notwithstanding the provisions of the preceding paragraph, by-laws may be adopted and filed prior to incorporation; in such case, such by-laws shall be approved and signed by all the incorporators and submitted to the Securities and Exchange Commission, together with the articles of incorporation.

In all cases, by-laws shall be effective only upon the issuance by the Securities and Exchange Commission of a certification that the by-laws are not inconsistent with this Code.

The Securities and Exchange Commission shall not accept for filing the by-laws or any amendment thereto of any bank, banking institution, building and loan association, trust company, insurance company, public utility, educational institution or other special corporations governed by special laws, unless accompanied by a certificate of the appropriate government agency to the effect that such by-laws or amendments are in accordance with law."

As correctly postulated by the petitioner, interpretation of this provision of law begins with the determination of the meaning and import of the word "must" in this