

THIRD DIVISION

[CA-G.R. SP No. 133288, March 31, 2015]

EDMUND GO AND MANUEL KIOK, PETITIONERS, VS. MARIANO SIY, RESPONDENT.

D E C I S I O N

CARANDANG, J.:

This is a Petition for Review under Rule 43 of the Rules of Court filed by herein petitioners Edmund Go and Manuel Kiok praying for the reversal of the Decision dated 3 December 2013 issued by the Office of the President (OP) which affirmed the Decision dated 15 July 2009 of the Board of Commissioners of the Housing and Land Use Regulatory Board (HLURB) in HLURB Case No. HOA-A-090312-0224.

The instant petition arose from the Complaint filed by respondent Mariano Siy (respondent) against the Board of Directors of the Grace Village Homeowners Association, Inc. (GVAI) questioning the legality of the election of the Board of Directors of GVAI for the year 2008, as well as the donation of P150,000.00 that it made in favor of Alejandro Go Beltran Foundation.

The facts are as follows:

On 11 January 2008, the Board of Directors of GVAI sent to its members an announcement stating therein that the term of office of the then incumbent members of the Board of Directors was about to expire in January 2008 and requested to submit their "nominations" of Directors not later than 12 January 2008.

On 12 January 2008, respondent sent a letter to the Board of Directors questioning the validity of the procedure of the election contending that the election should be by direct voting and participation of the general membership, either personally or by proxy votes, and that the announcement of the election should indicate the time, date, and procedure.

In a meeting conducted on 16 January 2008, the Board of Directors confirmed their intention to hold elections by nomination and scheduled the counting of the votes on 26 January 2008. In the same meeting, the Board of Directors decided to make a donation to Alejandro Go Beltran Foundation in the amount of P150,000.00.

The election of the Board of Directors was extended to noon of 28 January 2008. On even date, respondent wrote another letter to the Board of Directors questioning the donation to Alejandro Go Beltran Foundation on the ground that association funds are held in trust by them for the cost of the maintenance and management of GVAI and not for any other purpose.

On 31 January 2008, the resident members were informed of the result of the

election. On even date, the newly elected Board of Directors conducted a meeting wherein the officers were elected and the Committee heads were chosen.

On 26 February 2008, respondent filed the Complaint *a quo* praying, among others, that the election for the Board of Directors as well as the donation made to the Alejandro Go Beltran Foundation be declared null and void.

In its Answer filed on 29 April 2008, the Board of Directors of GVAI prayed for the dismissal of the Complaint on the ground that the respondent failed to attach in his complaint any proof of payment of fees as well as the certification from the chairman of the election committee that no amicable settlement was reached. The Board added that respondent has no standing to file the Complaint because he is not a member of GVAI. It also contended that the time to file the complaint contesting the legality of the election has already prescribed.

As regards the allegation that the donation made to Alejandro Go Beltran Foundation was an *ultra vires* act for being outside of the purposes of GVAI, the Board of Directors contended that under Section 36, paragraph 9 of the Corporation Code, every corporation has the capacity to make reasonable donations including those for the public welfare or for hospital, charitable, cultural, scientific, civic, or similar purposes.

On 21 January 2009, the National Capital Region Field Office of the HLURB promulgated a decision nullifying the election of the Board of Directors of GVAI for the year 2008. It also declared as null and void the donation made to the Alejandro Go Beltran Foundation for being *ultra vires*. The dispositive portion of the 21 January 2009 Decision states:

"WHEREFORE, judgment is hereby rendered as follows:

1. Declaring the alleged respondents' elections conducted from January 26 to 28, 2008 as null and void for being contrary to the by-laws of the association and the Corporation Code;
2. Ordering the immediate conduct of elections from receipt hereof under the supervision and guidance of this Office;
3. Declaring the donation of the P150,000.00 by respondents as invalid and directing respondents to return said amount to the association funds; and
4. Directing respondents to pay complainant P50,000.00 as attorney's fees and litigation expenses.

IT IS SO ORDERED."

This Decision was appealed by the Board of Directors of GVAI to the Board of Commissioners of the HLURB. On 15 July 2009, the Board of Commissioners affirmed the said Decision. The dispositive portion of the 15 July 2009 Decision reads:

"WHEREFORE, we are convinced that the finding of facts and conclusion of law of the Regional Office to be meritorious and therefore, the

appealed decision is hereby AFFIRMED *IN TOTO*, thus denying the appellants' appeal.

SO ORDERED.”

Unperturbed, the Board of Directors of GVAI appealed the case to the Office of the President but the latter denied the same, to wit:

“WHEREFORE, the Decision appealed from is hereby AFFIRMED *in toto*.

SO ORDERED.”

Hence, the present petition. Herein petitioners assigned the following errors:

I

THE COMPLAINT INSOFAR AS IT QUESTIONS THE ELECTION OF JANUARY 26 TO 28, 2008 AND REQUESTS FOR THE CALLING OF AN ELECTION HAS BECOME MOOT AND ACADEMIC.

II

THE COMPLAINT INSOFAR AS IT QUESTIONS THE DONATION SHOULD BE DISMISSED BECAUSE THE ASSOCIATION AND THE DONEE WHICH ARE INDISPENSABLE PARTIES TO THE DONATION WERE NOT IMPEADED AS PARTIES.

III

THE OP COMMITTED REVERSIBLE ERROR IN RULING THAT THE DONATION OF MONEY TO A FOUNDATION IS NOT WITHIN THE ENUMERATED POWERS OF GVAI.

IV

THE OP COMMITTED REVERSIBLE ERROR IN RULING THAT INDIVIDUAL RESPONDENTS ARE PERSONALLY LIABLE FOR THEIR OFFICIAL ACTS AS DIRECTORS OF GVAI.^[1]

Petitioners argue that the issue of whether the election conducted in January 2008 is null and void has become moot and academic when the GVAI called and held an election of its Board of Directors on 24 February 2013. They likewise argue that complaint should have been dismissed by the HLURB because the respondent failed to implead GVAI as well as the Alejandro Go Beltran Foundation which are indispensable parties to the present case. In addition, they contend that the donation of money to a foundation is within the powers of GVAI as enumerated in its Amended Articles of Incorporation.

Respondent counters that the present petition should be denied outright because the Decision of the OP has already attained finality for failure of the petitioners to file a Motion for Reconsideration to the OP's 3 December 2013 Decision. He also argues that Grounds II, III, and IV in the Petition for Review are deemed waived because petitioners did not plead these grounds in their Answer. Hence, these