

FIRST DIVISION

[G.R. No. 202974, February 07, 2018]

NORMA D. CACHO AND NORTH STAR INTERNATIONAL TRAVEL, INC., PETITIONERS, VS. VIRGINIA D. BALAGTAS, RESPONDENT.

DECISION

LEONARDO-DE CASTRO, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended, seeking to reverse and set aside the Decision^[1] dated November 9, 2011 and Resolution^[2] dated August 6, 2012 of the Court of Appeals in CA-G.R. SP No. 111637, which affirmed the Labor Arbiter's Decision^[3] dated March 28, 2005.

This case stemmed from a Complaint^[4] for constructive dismissal filed by respondent Virginia D. Balagtas (Balagtas) against petitioners North Star International Travel, Inc. (North Star) and its President Norma D. Cacho (Cacho) before the Labor Arbiter docketed as NLRC-NCR Case No. 04-04736-04.

The facts as narrated by the Court of Appeals are as follows:

In her *Position Paper* submitted before the Labor Arbiter, petitioner [Balagtas] alleged that she was a former employee of respondent TQ3 Travel Solutions/North Star International Travel, Inc., a corporation duly registered with the Securities and Exchange Commission (SEC) on February 12, 1990. She also alleged that she was one of the original incorporators-directors of the said corporation and, when it started its operations in 1990, she was the General Manager and later became the Executive Vice President/Chief Executive Officer.

On March 19, 2004 or after 14 years of service in the said corporation, petitioner was placed under 30 days preventive suspension pursuant to a Board Resolution passed by the Board of Directors of the respondent Corporation due to her alleged questionable transactions. On March 20, 2004, she was notified by private respondent Norma Cacho of her suspension and ordered to explain in writing to the Board of Directors her alleged fraudulent transactions within 5 days from said notice. Petitioner promptly heeded the order on March 29, 2004.

On April 5, 2004, while under preventive suspension, petitioner wrote a letter to private respondent Norma Cacho informing the latter that she was assuming her position as Executive Vice-President/Chief Executive Officer effective on that date; however, she was prevented from re-assuming her position. Petitioner also wrote a letter dated April 12, 2004 to the Audit Manager inquiring about the status of the examination of the

financial statement of respondent corporation for the year 2003, which request was, however, ignored. Consequently, petitioner filed a complaint claiming that she was constructively and illegally dismissed effective on April 12, 2004.

In their defense, respondents averred that, on March 19, 2004, the majority of the Board of Directors of respondent corporation decided to suspend petitioner for 30 days due to the questionable documents and transactions she entered into without authority. The preventive suspension was meant to prevent petitioner from influencing potential witnesses and to protect the respondent corporation's property. Subsequently, the Board of Directors constituted an investigation committee tasked with the duty to impartially assess the charges against petitioner.

Respondents alleged that petitioner violated her suspension when, on several occasions, she went to the respondent corporation's office and insisted on working despite respondent Norma Cacho's protestation. Respondents also alleged that the complaint for constructive dismissal was groundless. They asserted that petitioner was not illegally dismissed but was merely placed under preventive suspension.^[5]

The Decision of the Labor Arbiter

In his Decision dated March 28, 2005, the Labor Arbiter found that respondent Balagtas was illegally dismissed from North Star, viz.:

WHEREFORE, judgment is hereby made finding the complainant to have been illegally dismissed from employment on July 15, 2004 and concomitantly ordering the respondent North Star International Travel, Inc., to pay her a separation pay computed at thirty (30) days pay for every year of service with backwages, plus commissions and such other benefits which she should have received had she not been dismissed at all.

The respondent North Star International Travel, Inc. is further ordered to pay complainant three (3) million pesos as moral damages and two (2) million pesos as exemplary damages plus ten (10%) percent attorney's fees.^[6]

Subsequently, petitioners appealed the case to the National Labor Relations Commission (NLRC). In their Notice of Appeal,^[7] they prayed that Balagtas's Complaint be dismissed for lack of jurisdiction. While they maintained that Balagtas was never dismissed, they also alleged that she was a corporate officer, incorporator, and member of the North Star's Board of Directors (The Board). Thus, the NLRC cannot take cognizance of her illegal dismissal case, the same being an intra-corporate controversy, which properly falls within the original and exclusive jurisdiction of the ordinary courts.

The Ruling of the NLRC

In its Resolution^[8] dated September 30, 2008, the NLRC ruled in favor of

petitioners, viz.:

WHEREFORE, the questioned Decision of the Labor Arbiter is REVERSED and SET ASIDE and the complaint is DISMISSED for lack of jurisdiction.

[9]

The NLRC's findings are as follows: *First*, through a Board resolution passed on March 31, 2003, Balagtas was elected as North Star's **Executive Vice President** and **Chief Executive Officer**, as evidenced by a Secretary's Certificate dated April 22, 2003. *Second*, in her Counter Affidavit executed sometime in 2004 in relation to the criminal charges against her, respondent Balagtas had in fact admitted occupying these positions, apart from being one of North Star's incorporators. And, *third*, the position of "**Vice President**" is a corporate office provided in North Star's by-laws.^[10]

Based on these findings, the NLRC ruled that **respondent Balagtas was a corporate officer of North Star at the time of her dismissal and not a mere employee**. A corporate officer's dismissal is always an intra-corporate controversy,^[11] a subject matter falling within the Regional Trial Court's (RTC) jurisdiction.^[12] Thus, the Labor Arbiter and the NLRC do not have jurisdiction over Balagtas's Complaint.

The NLRC also held that **petitioners North Star and Cacho were not estopped from raising the issue of lack of jurisdiction**. Citing *Dy v. National Labor Relations Commission*,^[13] the NLRC explained that the Labor Arbiter heard and decided the case upon the theory that he had jurisdiction over the Complaint. Thus, the Labor Arbiter's jurisdiction may be raised as an issue on appeal.

Aggrieved, respondent Balagtas moved for reconsideration but was denied. Thus, she elevated the case to the Court of Appeals via a petition for *certiorari*.

The Ruling of the Court of Appeals

In its assailed Decision, the Court of Appeals found merit in Balagtas's petition, viz.:

WHEREFORE, the petition is hereby GRANTED. The assailed *Resolution*, dated September 30, 2008 of the National Labor Relations Commission dismissing the petitioner's complaint for lack of jurisdiction, is hereby REVERSED and SET ASIDE. The *Decision*, dated March 28, 2005 of the Labor Arbiter is AFFIRMED and this case is ordered REMANDED to the NLRC for the re-computation of petitioner's backwages and attorney's fees in accordance with this Decision.^[14]

In ruling that the present case does not involve an intra-corporate controversy, the Court of Appeals applied a two-tier test, viz.: **(a) the relationship test**, and **(b) the nature of controversy test**.

Applying the **relationship test**, the Court of Appeals explained that no intra-corporate relationship existed between respondent Balagtas and North Star. While respondent Balagtas was North Star's *Chief Executive Officer* and *Executive Vice President*, petitioners North Star and Cacho failed to establish that occupying these positions made her a corporate officer. *First*, respondent Balagtas held the *Chief*

Executive Officer position as a **mere corporate title** for the purpose of enlarging North Star's corporate image. According to North Star's by-laws, the company President shall assume the position of Chief Executive Officer. Thus, respondent Balagtas was not empowered to exercise the functions of a corporate officer, which was lawfully delegated to North Star's President, petitioner Cacho.^[15] And, second, petitioner North Star's By-laws only enumerate the position of *Vice President* as one of its corporate officers. The NLRC should not have assumed that the Vice President position is the same as the Executive *Vice President* position that respondent Balagtas admittedly occupied. Following *Matling Industrial and Commercial Corporation v. Coros*,^[16] the appellate court reminded that "a position must be expressly mentioned in the by-laws in order to be considered a corporate office."^[17]

On the other hand, the Court of Appeals elucidated that based on the allegations in herein respondent Balagtas's complaint filed before the Labor Arbiter, the present case involved **labor issues**. Thus, even using the **nature of controversy test**, it cannot be regarded as an intra-corporate dispute.^[18]

The subsequent motions for reconsideration were denied.^[19] Hence, the present petition.

The Issues

Petitioners North Star and Cacho come before this Court raising the following issues:

A.

WHETHER RESPONDENT BALAGTAS IS A CORPORATE OFFICER AS DEFINED BY THE CORPORATION CODE, CASE LAW, AND NORTH STAR'S BY-LAWS

B.

WHETHER THE APPELLATE COURT'S DECISION REVERSING THE NLRC'S FINDING THAT BALAGTAS WAS A CORPORATE OFFICER FOR WHICH HER ACTION FOR ILLEGAL DISMISSAL WAS INAPPROPRIATE FOR IT TO RESOLVE, WAS CORRECT ESPECIALLY BECAUSE NO DISCUSSION OF THAT CONCLUSION WAS MADE BY THE APPELLATE COURT IN ITS DECISION

C.

WHETHER THE AWARD BY THE APPELLATE COURT OF SEPARATION PAY, BACKWAGES, DAMAGES, AND LAWYER'S FEES TO BALAGTAS WAS APPROPRIATE^[20]

Petitioners Cacho and North Star insist that the present case's subject matter is an intra-corporate controversy. They maintain that respondent Balagtas, as petitioner North Star's *Executive Vice President* and *Chief Executive Officer*, was its corporate officer. Particularly, they argue that: first, under petitioner North Star's by-laws, *vice-presidents* are listed as corporate officers. Thus, the NLRC erred when it differentiated between: (a) "*vice president*" as a corporate office provided in

petitioner North Star's by-laws, and (b) "*Executive Vice President*," the position occupied by respondent Balagtas. Its interpretation unduly supplanted the Board's wisdom and authority in handling its corporate affairs. Her appointment as one of petitioner North Star's *vice presidents* is evidenced by the **Secretary's Certificate** dated April 22, 2003. As held in *Mailing*, if the position or office is created by the **by-laws** and the **appointing authority is the board of directors**, then it is a corporate office. *Second*, she had already been a corporate officer of petitioner North Star for quite some time, having been appointed as *General Manager* through a **Board Resolution** in 1997 and, subsequently, as *Executive Vice President* and *General Manager* in 2001, as evidenced by the **Secretary's Certificate** dated March 23, 2001. And *third*, respondent Balagtas has openly admitted her appointments to these positions. She even acknowledged being a *member of the Board* and at the same time petitioner North Star's *Executive Vice President* and *General Manager*.^[21]

Considering all these in applying the **relationship test**, petitioners Cacho and North Star assert that respondent Balagtas is not petitioner North Star's mere employee but a corporate officer thereof whose dismissal is categorized as an intra-corporate matter.^[22]

Petitioners Cacho and North Star further cite *Espino v. National Labor Relations Commission*^[23] where the Court held that a corporate officer's dismissal is always a corporate act. It cannot be considered as a simple labor case. Thus, under the **nature of the controversy test**, the present case is an intra-corporate dispute because the primary subject matter herein is the dismissal of a corporate officer.

In refuting petitioners Cacho and North Star's allegations, respondent Balagtas avers that: *first*, she was not a corporate officer of petitioner North Star. The Board Resolution and Secretary's Certificates that purportedly support petitioners Cacho and North Star's claims were falsified, forged, and invalid. Petitioners Cacho and North Star failed to show that the *Executive Vice President* position she had occupied was a corporate office. Said position was a mere nomenclature as she was never empowered to exercise the functions of a corporate officer. In fact, in the 2003 General Information Sheet (GIS) of petitioner North Star, the field "corporate position" opposite respondent Balagtas's name was filled out as "not applicable." *Second*, she was no longer a stockholder and director of petitioner North Star. *Third*, she was merely an employee. Petitioner Cacho was the one who hired her, determined her compensation, directed and controlled the manner she performed her work, and ultimately, dismissed her from employment. *Fourth*, the issue of whether or not she was a corporate officer is irrelevant because her claim for back wages, commissions, and other monies is clearly categorized as a labor dispute, not an intra-corporate controversy.^[24] And *fifth*, petitioners Cacho and North Star are already estopped from questioning the jurisdiction of the Labor Arbiter. They actively participated in the proceedings before the Labor Arbiter and cannot assail the validity of such proceedings only after obtaining an unfavorable judgment.^[25]

The Ruling of the Court

The petition is meritorious.

The sole issue before the Court is whether or not the present case is an intra-