

## THIRD DIVISION

[ G.R. No. 185647, July 26, 2017 ]

**DY TEBAN TRADING, INC., PETITIONER, VS. PETER C. DY,  
JOHNNY C. DY AND RAMON C. DY, RESPONDENTS.**

### DECISION

**JARDELEZA, J.:**

This is a petition for review on *certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court. Petitioner Dy Teban Trading, Inc. (DTTI) seeks the reversal of the Decision<sup>[2]</sup> dated December 17, 2008 (Decision) of the Court of Appeals (CA) which nullified the Orders dated June 18, 2007<sup>[3]</sup> and May 26, 2008<sup>[4]</sup> of the Regional Trial Court (RTC), Butuan City.

DTTI is a domestic closed corporation owned by the Dy siblings. It has its principal office at Concepcion St., Butuan City and a branch in Montilla Boulevard.<sup>[5]</sup> Due to certain disagreements relating to its management, DTTI instituted an action for injunction against Peter C. Dy, Johnny C. Dy and Ramon C. Dy (respondents) before the RTC on September 7, 2004. This was docketed as an intra-corporate case. Respondents, on the other hand, filed an action for dissolution of the corporation.<sup>[6]</sup>

In its petition before the RTC, DTTI alleged that Johnny C. Dy (Johnny), an employee in its Montilla branch, had "squandered cash sales and stocks" from the branch either for his personal benefit or that of Peter C. Dy (Peter) and Ramon C. Dy (Ramon).<sup>[7]</sup> To prevent further losses, DTTI decided to close its Montilla branch and had the doors of the branch store welded shut. This notwithstanding, DTTI claimed that respondents forcibly opened the branch store and have continuously deprived it of the use of the same.<sup>[8]</sup>

Both actions were raffled to Branch 33 of the RTC which, incidentally, was also the designated commercial court. The RTC heard the cases jointly.<sup>[9]</sup> The action for the dissolution of the corporation was, however, eventually dismissed due to the respondents' failure to pay the proper docket fees.<sup>[10]</sup>

During the trial, DTTI presented Lorenzo C. Dy (Lorenzo) as a witness on June 28, 2005. Lorenzo's cross-examination by respondents did not push through on the same date but was scheduled to continue on August 30, 2005.<sup>[11]</sup> During this hearing, however, the scheduled cross-examination did not proceed as Atty. Dollfuss R. Go (Atty. Go), one of respondents' counsels, could not make it due to certain health problems. Atty. Clementino C. Rabor (Atty. Rabor), respondents' other counsel, moved in open court for the postponement of Lorenzo's cross-examination. The RTC granted this motion and issued an Order<sup>[12]</sup> setting the next hearing to September 22, 2005. Since respondents were being represented by two lawyers, the

RTC warned that the scheduled cross-examination must proceed regardless of Atty. Go's absence, otherwise respondents' right to cross-examine Lorencio will be deemed waived.<sup>[13]</sup>

The trial was further delayed when then Presiding Judge Victor A. Tomaneng died and his cases ordered transferred to the *sala* of Judge Eduardo S. Casals who set the case for hearing on January 17, 2006.<sup>[14]</sup> As the parties needed to clarify with this Court whether the transfer of cases included intra-corporate disputes, the hearing scheduled on January 17, 2006 did not push through and Lorencio's cross-examination by respondents twice rescheduled to May 9, 2006<sup>[15]</sup> and October 16, 2006. When Atty. Wilfredo Asis (Atty. Asis), counsel for DTTI, could not make it to the October 16 hearing due to health problems, the RTC granted DTTI's motion for postponement without objection from respondents' counsel and the hearing was again reset to March 5, 2007.<sup>[16]</sup>

On March 5, 2007, Atty. Asis marked three additional documents in connection with Lorencio's testimony. Atty. Go thereafter moved in open court that he be given time to study the documents and adequately prepare for the cross-examination. The RTC thus issued an Order<sup>[17]</sup> setting the cross examination on June 18, 2007.

On June 18, 2007, however, neither Atty. Go nor Atty. Rabor attended the hearing for respondents. No motion for postponement was also filed. Atty. Asis thus moved that respondents be declared to have waived their right to cross-examine Lorencio, who was DTTI's last witness. He also asked for 15 days within which to file his written formal offer of evidence. The RTC granted this motion and issued an Order<sup>[18]</sup> which states:

WHEREFORE, in view of the foregoing, the Court hereby considers Atty. Dollfuss R. Go to have waived his right to cross-examine witness Lorencio C. Dy. Accordingly, Atty. Wilfred D. Asis is hereby given a period of fifteen (15) days from today within which to file his written formal offer of exhibits. The defendants are given the same number of days reckoned from their receipt of a copy of plaintiffs formal offer of exhibits within which to file their comment or opposition thereto, after which the said formal offer of exhibits shall be deemed submitted for resolution.

SO ORDERED.<sup>[19]</sup>

Respondents, through Atty. Go, filed a motion<sup>[20]</sup> seeking reconsideration of the Order. They argued that the RTC, in declaring them to have waived their right to cross-examine Lorencio, deprived them of their right to due process. Respondents also alleged that Atty. Go had, on June 16, 2007 or two days prior to the June 18, 2007 hearing, called Atty. Asis to inform him that he could not make it to the hearing because he had to fly to Cebu for another case. While Atty. Go recognized that he should have filed a motion for continuance before the court, he explained that he was only informed of the necessity of attending the hearing in Cebu on June 16, 2007, a Saturday.<sup>[21]</sup> Since there was no more time to draft a motion, he called Atty. Asis to ask him to accommodate another resetting of the cross-examination. Atty. Go claims that Atty. Asis agreed to his request over the phone. To his surprise, however, Atty. Asis, during the June 18, 2007 hearing, instead moved that

respondents be declared to have waived their right to cross-examine Lorencio.<sup>[22]</sup>

In an Order<sup>[23]</sup> dated October 10, 2007, the RTC denied respondents' motion for reconsideration. It explained that, as early as August 30, 2005, it had already warned respondents that failure to conduct the cross-examination on the scheduled dates will lead to a declaration that they have waived their right to cross-examine DTTI's witness. The RTC also found Atty. Go's explanation insufficient, stating that he should have filed a formal motion for postponement before the court. Any alleged agreement with DTTI's counsel is irrelevant insofar as the court is concerned. The RTC also noted that Atty. Go could have requested his co-counsel, Atty. Rabor, to appear before the court and request for postponement. It then highlighted that granting continuance belongs to the sole discretion of the court. Lawyers must not assume that any motion for postponement will be granted.

Aggrieved, respondents, on November 16, 2007, went to the CA through a special civil action for *certiorari* under Rule 65 of the Rules of Court (*certiorari* case). Their petition, docketed as CA-G.R. SP No. 02051-MIN, challenged the June 18, 2007 and October 10, 2007 Orders of the RTC but did not include a prayer for the issuance of a temporary restraining order (TRO).<sup>[24]</sup>

On July 11, 2007, DTTI filed a motion for admission of its exhibits.<sup>[25]</sup> This was granted in an Order<sup>[26]</sup> dated March 3, 2008. In the same Order, the RTC set respondents' initial presentation of evidence on May 26, 2008.

Respondents filed a supplemental petition<sup>[27]</sup> dated April 2, 2008 in the *certiorari* case challenging the RTC's March 3, 2008 Order. This included an application for the issuance of a TRO or a writ of preliminary injunction.

On May 26, 2008, the scheduled hearing proceeded but neither respondents nor their counsel appeared. Instead, they filed an urgent motion for continuance,<sup>[28]</sup> arguing that the presentation of evidence should be postponed because of the pendency of the *certiorari* case before the CA. They also highlighted that they have an existing application for the issuance of a TRO or a writ of preliminary injunction which the CA has yet to resolve.

During this hearing, DTTI moved for the denial of the urgent motion for continuance. It argued that Section 7, Rule 65 of the Rules of Court requires that the case must proceed within 10 days from the filing of a petition for *certiorari* where no TRO or preliminary injunction has been issued. DTTI also stressed that the case is an action for injunction which, by its very nature, requires speedy disposition. As the case has already been pending for four years, it asked the RTC to declare respondents to have waived their right to present evidence. In an Order<sup>[29]</sup> dated May 26, 2008, the RTC held:

WHEREFORE, in the light of the foregoing, the motion for continuance of the defendants is hereby DENIED for lack of merit. The defendants are hereby declared to have waived their right to present their evidence and that this case is now deemed submitted for decision.

SO ORDERED.<sup>[30]</sup>

On August 5, 2008, the CA denied the application for a TRO or writ of preliminary injunction.<sup>[31]</sup>

On August 22, 2008, the RTC rendered its Decision,<sup>[32]</sup> ruling in DTTI's favor. Basing its findings solely on Lorenzo's unchallenged testimony and the documentary evidence presented by DTTI, the RTC granted the injunction and ordered respondents to pay compensatory damages in the amount of P2,000,000 for loss of stocks, P160,000/month for unrealized income from September 2004 until respondents vacate the building, P150,000 as damages under Article 2205(2) of the Civil Code, P150,000 as nominal damages, P100,000 as exemplary damages, P500,000 as attorney's fees, and P500,000 as litigation expenses.<sup>[33]</sup>

On October 8, 2008, DTTI filed a motion for execution of the RTC Decision.<sup>[34]</sup> Respondents, on the other hand, filed a second supplemental petition<sup>[35]</sup> before the CA in the *certiorari* case to challenge the RTC Decision. This, however, was ordered by the CA to be stricken off the records.<sup>[36]</sup>

In a Decision<sup>[37]</sup> dated December 17, 2008, the CA held that the RTC acted with grave abuse of discretion when it issued the June 18, 2007 and May 26, 2008 Orders. It held:

**WHEREFORE**, in view of the foregoing, the twin Orders of 18 June 2007 and of 26 May 2008 and the Decision of 22 August 2008 rendered in Civil Case No. 1235 by public respondent are hereby ordered **ANNULLED** and **SET ASIDE** and the case **REMANDED** to the trial court for further and appropriate proceedings conformably with the above discussions.

**SO ORDERED.**<sup>[38]</sup>

DTTI thus filed this petition for review on *certiorari*<sup>[39]</sup> under Rule 45 of the Rules of Court assailing the CA's Decision. It insists that the RTC correctly declared as waived respondents' right to cross-examination and presentation of evidence. DTTI argues that respondents not only failed to file a written motion for postponement of the scheduled cross-examination, the reason invoked to justify the postponement was also not valid. Moreover, DTTI adds that respondents were not entitled, *as a matter of right*, to the grant of their motion for continuance. Similarly, DTTI argues that the RTC correctly found that respondents waived their right to present evidence when they failed to appear on the scheduled date.

In their comment,<sup>[40]</sup> respondents challenge the jurisdiction of the RTC in taking cognizance of the action for injunction as an intra-corporate case. According to respondents, since the action for injunction does not involve an intra-corporate dispute, the RTC, sitting as a commercial court, lacked jurisdiction. Its decision on the case is therefore void. Finally, respondents argue that the CA properly reversed the RTC. They claim that they were deprived of their right to due process when the RTC haphazardly declared them to have waived the right to cross-examine DTTI's witness and to present their evidence.

The issues thus presented are:

- (1) Whether the action filed before the RTC was an intra-corporate case properly heard by the RTC acting as a special commercial court; and
- (2) Whether the CA was correct in reversing the orders of the RTC and holding that respondents were deprived of their right to present evidence and to cross-examine DTTI's witness.

## I

Section 5 of the Securities Regulation Code<sup>[41]</sup> transferred the jurisdiction of the Securities and Exchange Commission (SEC) over intra-corporate disputes to RTCs designated by the Supreme Court as commercial courts.

The existence of an intra-corporate dispute must be properly alleged in a complaint filed before a commercial court because the allegations in the complaint determine a tribunal's jurisdiction over the subject matter.<sup>[42]</sup> This means that the complaint must make out a case that meets both the relationship and the nature of the controversy tests.

Under the *relationship test*, a dispute is intra-corporate if it is: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the state insofar as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves.<sup>[43]</sup>

The nature of the controversy test, on the other hand, requires that the dispute itself must be intrinsically connected with the regulation of the corporation, partnership or association.<sup>[44]</sup> In *Strategic Alliance Development Corporation v. Star Infrastructure Development Corporation*,<sup>[45]</sup> we explained that the controversy "must not only be rooted in the existence of an intra-corporate relationship, but must also refer to the enforcement of the parties' correlative rights and obligations under the Corporation Code as well as the internal and intra-corporate regulatory rules of the corporation."<sup>[46]</sup>

Applying the foregoing tests, we agree with the CA that the complaint filed by DTTI before the RTC was a civil action for injunction and **not** an intra-corporate dispute.

First, a reading of the complaint will reveal that it contains no allegation that the defendants therein (respondents in the present petition) are stockholders of the corporation. Notably, the complaint even identified Johnny as a DTTI employee. The complaint also does not allege that the other defendants therein have acted in their capacity as stockholders in depriving DTTI of access to its Montilla branch.

Second, the nature of the controversy does not involve an intra corporate dispute. The complaint for injunction asks the RTC to order respondents to cease from controlling DTTI's Montilla branch and allow DTTI to use the same. In claiming that respondents illegally possessed the branch store, the complaint does not allege that it arose out of a disagreement between the stockholders. Rather, the complaint states that Johnny, DTTI's employee, colluded with co-respondents Peter and Ramon in forcibly opening the Montilla branch store and preventing DTTI from using the property.