

THIRD DIVISION

[G.R. No. 165146, August 12, 2015]

SECURITIES AND EXCHANGE COMMISSION AND VERNETTE G. UMALI, VS. BAGUIO COUNTRY CLUB CORPORATION, RESPONDENT.

[G.R. NO. 165209]

RAMON K. ILUSORIO AND ERLINDA K. ILUSORIO, PETITIONERS, VS. BAGUIO COUNTRY CLUB CORPORATION, RESPONDENT.

D E C I S I O N

JARDELEZA, J.:

These are consolidated cases questioning the March 26, 2004 Decision^[1] and September 1, 2004 Resolution of the Court of Appeals (CA) in C.A. G.R. SP No. 79257.^[2]

On December 17, 1998, the Securities and Exchange Commission (SEC) approved the amended by-laws submitted by the Baguio Country Club Corporation (BCCC). Article 5, Section 2 thereof reads:

Election and Term. The Board of Directors shall be elected at the regular meetings or stockholders and shall hold office for two (2) years and until their successors are elected and qualified. x x x (Emphasis supplied)^[3]

On September 27, 2002, Atty. Manuel R. Singson, acting for and in behalf of Ramon K. Ilusorio and Erlinda Ilusorio (the Ilusorios) requested the SEC, via a letter-complaint, to compel BCCC to hold the annual election of the board of directors for 2002 in view of the nullity of the above-quoted provision in the amended by-laws.^[4] He informed the SEC that sometime in 2001, a stockholder of BCCC requested for the opinion of the SEC on the validity of the amendment, particularly the two (2) year term of the board of directors; and that in response, the SEC opined that the amendment increasing the term of office to two (2) years is contrary to law, particularly Section 23 of the Corporation Code which limits the term of office to only one (1) year.

In its Comment to the said letter, BCCC claimed that its amended by laws have already been approved by the SEC and that the petitioners have no standing to question the said by-laws, not being stockholders of the BCCC.^[5]

On November 13, 2002, the SEC, through the Corporation Registration and Monitoring Department, issued an Order^[6] ruling that Article 5, Section 2 of the

amended by-laws of BCCC violates Section 23 of the Corporation Code on the term of office of members of the board of directors and should be amended to conform to the rules. The SEC also ordered BCCC to conduct the annual election of members of the board.

On February 6, 2003, SEC ordered BCCC's Chairman, President and board members to show cause why they should not be cited for indirect contempt for defying the order dated November 13, 2002.^[7] BCCC submitted its compliance^[8] on February 12, 2003, claiming that it did not intend to ignore the order of Atty. Amboy, but was merely awaiting the latter's clarifications regarding the Order dated November 13, 2002.

On March 18, 2003, Ramon Ilusorio, as stockholder of BCCC, formalized Atty. Singson's letter-request through a petition with the SEC.^[9] He alleged among others, that the BCCC refused to conduct a stockholders' meeting for the election of board members, and that the individuals claiming to be officers of the BCCC used their positions to manipulate stockholders' meeting to their advantage and harass those who have opposed them. The petition prayed for the SEC to call and conduct, under its control and supervision, a stockholder's meeting in the BCCC for the election of the members of the board of directors.^[10]

In its August 15, 2003 Order,^[11] the SEC observed that the only issue that must be resolved is whether or not the SEC can call a stockholders' meeting for the purpose of conducting an election of the BCCC board of directors.^[12] It ruled that under the Corporation Code, it has the power to call such a meeting and to order the conduct of an election of new board members in the BCCC.^[13] Thus it ordered, among others, the calling and conduct of a stockholders meeting for the election of the members of the board under the control and supervision of the SEC.^[14]

On September 26, 2003, BCCC filed a petition^[15] for certiorari and prohibition with the Court of Appeals (CA), imputing grave abuse of discretion on the part of the SEC for issuing its August 15, 2003 Order. BCCC claimed that Ramon and Erlinda Ilusorio are not stockholders of the BCCC and therefore cannot file an action to question the amended by-laws of the corporation. It added that the matter is within the exclusive jurisdiction of the trial court, being an intra-corporate dispute.

In its Decision^[16] dated March 26, 2004, the CA granted the petition, set aside the SEC's Orders and dismissed the letter-complaint of Ramon Ilusorio.

The CA ruled that the respondents or at least Ramon Ilusorio has legal standing to file the petition since he is a registered stockholder of the BCCC, as evidenced by his Certificate of Stock issued on May 11, 1979.^[17]

Nonetheless, the CA agreed with BCCC that the SEC had no jurisdiction over the unverified letter and petition filed on behalf of the Ilusorios.^[18]

According to the CA, the matter between the parties is an intra corporate dispute, being between a stockholder and the corporation itself, as well as other stockholders, particularly those occupying positions in the board of directors. Further, the SEC's jurisdiction over all cases enumerated under Section 5 of

Presidential Decree No. 902-A, including intra-corporate controversies has been transferred to the appropriate Regional Trial Courts by virtue of Republic Act (RA) No. 8799 (The Securities Regulation Code). Thus, the dispute pertains to the regular courts.

The CA held that contrary to petitioners' claims, this is not a case of the SEC's exercise of its regulatory functions, but rather "a legal dispute between one set of stockholders against the corporation and its incumbent board of directors"; "an intramural of arguments and evidence on the parties' respective rights and interpretation of legal provisions applicable on a certain set of facts."^[19]

Finally, the CA dismissed the contempt charges, noting that these accusations are only brought about by the parties' desire to advance their positions.^[20]

On September 1, 2004, the CA denied the SEC's motion for reconsideration for lack of merit.^[21] Hence, these petitions.

G.R. No. 165146

In G.R. No. 165146, the petitioner SEC, through the Office of the Solicitor General (OSG), raised the following lone error:

THE COURT OF APPEALS SERIOUSLY ERRED IN RULING THAT THE IMPLEMENTATION OF THE STATUTORY ONE (1) YEAR TERM OF OFFICE FOR MEMBERS OF THE BOARD OF DIRECTORS IS BEYOND THE REGULATORY POWER OF SEC BUT WITHIN THE JURISDICTION OF THE REGULAR COURTS.^[22]

According to the OSG, the one (1) year term rule for members of the board of directors is mandatory, and cannot be shortened or extended by agreement of the parties or by those interested in the position, thus BCCC's amended by-laws granting its board of directors a two (2) year term is void, notwithstanding the SEC's prior approval.^[23] Pursuant to Section 5 of the Securities Regulation Code, the SEC has the authority to compel BCCC to amend its by-laws to conform with Section 23 of the Corporation Code, and to impose sanction on the recalcitrant BCCC officers and board members.^[24]

The OSG argues that the matter at hand is not an intra-corporate dispute. The complaint filed with the SEC was administrative in nature since it called for an administrative remedy, even if a third party has initiated and/or opposed it.^[25] The authority to accept, reject, or order the modification or amendment of BCCC's by-laws and direct the performance of an act relative thereto is administrative in nature and does not partake of a quasi-judicial function.^[26]

In its Comment^[27] in G.R. No. 165146, BCCC claims that it was subjected to grave and oppressive acts by the SEC when it issued a series of patently void orders. These orders were not issued in the exercise of SEC's regulatory powers, but rather in the nature of quasi-judicial powers, which the SEC no longer possesses in view of the transfer of said quasi-judicial power to the RTCs as provided in RA No. 8799.

The SEC can no longer interpret a provision of law, as it did in this case, neither can it exercise "directing" and "examining" powers pursuant to such interpretation.^[28] BCCC also maintains that there is an intra-corporate dispute because the unverified letter and the petition in the SEC alleged that Erlinda and Ramon Ilusorio are stockholders.

According to the BCCC, the SEC's authority to order the conduct of an election of directors is limited to situations when there is no person authorized to call a meeting or if no meeting is being called in contravention of the by-laws. In this case, however, the SEC is aware and is always notified by BCCC of its regular and annual stockholders' meeting conducted by authorized officers of the BCCC. In addition, there is a need for a valid petition for the holding of a stockholders' meeting filed by a valid stockholder before the SEC may compel the same.^[29]

In their Reply,^[30] the Ilusorios maintain that the SEC's act of calling for an election is not exercise of its quasi-judicial power, but rather its regulatory power against a corporation to ensure compliance with the Corporation Code.^[31] Moreover, they clarify that contrary to BCCC's insistence that there is an intra-corporate dispute, there is in fact no dispute at all, since they are not asserting any right against the respondent, nor seeking any positive relief for their personal benefit. For all intents and purposes, the controversy is limited to the non-compliance of BCCC's bylaws to the Corporation Code.^[32]

On the other hand, the SEC insists that the case presents a purely legal issue, that is, whether the implementation of the one year term of office for members of the board of directors of a corporation is beyond the regulatory power of the SEC and within the jurisdiction of the regular courts. Defending its actions, the SEC maintained that it merely implemented the statutory term of office provided in Section 23 of the Corporation Code. The law being clear and categorical, there is no room for interpretation nor construction; there is only room for application. The SEC clarifies that calling for a meeting and ordering the conduct of elections is necessary in view of the expired term of the members of the BCCC board of directors; hence there is no one authorized to call a meeting except the SEC.

G.R. No. 165209

In G.R. No. 165209, the Ilusorios submit that:

1. The Court Of Appeals Patently Erred When It Ruled That The SEC Has No Jurisdiction To Issue. The Order Dated August 15, 2003.
- II. The Court Of Appeals Erred In Ruling That The Issue At Hand Is One Involving Intra-Corporate Controversy And Therefore Lies With The Regular Courts Pursuant To R.A. No. 8799.^[33]

The Ilusorios claim that the CA's determination of the dispute as intra-corporate is solely based on the identity of the parties-stockholder and corporation itself. However, the determination of intra-corporate controversy is not absolutely based on who the contending parties are, but rather on the nature of the controversy itself,

and the authority required to resolve it.^[34] While the complaint may have been initiated by Ramon Ilusorio, a stockholder of BCCC, the only matter brought to the SEC's attention was BCCC's violation of the Corporation Code; Ramon Ilusorio did not assert any specific right or interest against BCCC.^[35]

The nullification of BCCC's by-laws is only a necessary effect of the act of the SEC in the exercise of its regulatory, supervisory and control power over corporations.^[36] The Ilusorios also maintain that the SEC is empowered under RA No. 8799 (The Securities Regulation Code) to call for a meeting for the conduct of an election, even if there are authorized persons to call such a meeting.^[37] In any case, pursuant to the Corporation Code and the Securities Regulation Code, the SEC can act and exercise its regulatory powers *motu proprio*, without the complaint or initiative of anyone, although it may exercise its regulatory powers upon the complaint or initiative of private parties.^[38]

The Ilusorios also impute error on the CA when it did not rule on the other issues submitted before it. They claim that they questioned the authority of Federico R. Agcaoili in filing the petition in the CA on behalf of BCCC, considering that he had been holding the position as member of the board of directors for more than one (1) year, and as such he is just a mere usurper. They also impute forum shopping on the part of BCCC when it filed the petition in the CA notwithstanding its admission that it filed a letter-complaint to then SEC Chairperson Lilia Bautista of the SEC, seeking the reconsideration and reversal of the Order dated August 15, 2003, the same order being assailed in the petition.^[40] They state that the special civil action of certiorari under Rule 65 is a wrong remedy to appeal the Order of the SEC General Counsel, since the proper remedy is an appeal to the SEC *en banc* before resort can be made to the courts, pursuant to Sections 17-1 and 17-2 of the Revised Rules of Procedure of the SEC.^[41] Lastly, the Ilusorios claim that the BCCC violated the *Status Quo* Order of the CA dated November 10, 2003 when it proceeded with the stockholders meeting on November 6, 2003.^[42]

In its Comment^[43], the BCCC maintains that the SEC had no jurisdiction to take cognizance of an unverified initiatory letter.^[44] Even the petition later filed by Ilusorio is beyond SEC's jurisdiction because jurisdiction has been expressly transferred to the special corporate courts of the RTCs. The regulatory powers of the SEC do not cover its assumption of authority over the dispute between the parties in this case, as well as invalidating a provision in BCCC's by-laws.^[45] Corporation Code does not authorize the SEC to nullify or invalidate a by-law provision which has been previously approved.^[46] It further alleges that the letter, far from merely bringing to the attention of the SEC a violation of the Corporation Code, actually reeks of an effort to drag the BCCC into the long drawn-out feud of the Ilusorio family.^[47] BCCC further argues that inasmuch as the SEC is powerless to nullify BCCC's by-laws, any act in connection thereof, such as the calling a meeting for the purpose of an election is also necessarily void.^[48] Finally, BCCC states that there was no need for the CA to discuss the other collateral issues raised by the Ilusorios, since in any case, all proceedings before the SEC are null and void.^[49]

Meanwhile, the Ilusorios tiled their Urgent Manifestation and Motion dated October 28, 2004, stating that the Corporate Secretary of BCCC issued a Notice of Annual