

## SEVENTH DIVISION

[ CA-G.R. SP NO. 92372, August 15, 2006 ]

**COL. LUVIN S. MANAY, (RET), COL. ANTONIO MANTUANO (RET), 2LT. JOHNSON NESTOR OCFEMIA (RET), MAJ. JOSE A. ELAURZA (RET) AND COL. ANSELMO R. GERONIMO (RET), PETITIONERS, VS. HON. HENDRICK F. GINGOYON, AIR MATERIEL WING SAVINGS AND LOAN ASSOCIATION, INC. (AMWSLAI), RICARDO NOLASCO, JR., THADDEUS ESTALILLA, ISMAEL ABAD, MORADO MERCADO, CESAR TOLEDANES, DOMINGO DIMAPILIS, ANTONIO GUMBA, RICARDO PERIDO, CEDRIC REYES, RUBEN ESTEPA, ANGEL TAPAC, ROLANDO CACABELOS, THE AMWSLAI COMMITTEE ON ELECTIONS (AMWSLAI-COMELEC) REPRESENTED BY MAJ. GEN. RODOLFO S. ESTRELLADO (RET), COL. GREGORIO G. PADUGANAN AND LTC ROLANDO G. JUNGCO, RESPONDENTS, ATTY. FE PADILLA, INTERVENOR.**

### D E C I S I O N

#### **DIMAAMPAO, J.:**

*Laws are not just mere compositions; they have ends to be achieved. Thus, when faced with borderline situations in which substantive right is invoked against the strict construction of the law, it is the duty of the courts to look to the evil to be eluded to best effectuate the purpose to be subserved.*

In this *Petition for Certiorari*, petitioners assail, on the ground of grave abuse of discretion, the *Orders* dated 14 October 2005<sup>[1]</sup> and 28 October 2005<sup>[2]</sup> of the Regional Trial Court of Pasay City, Branch 117, which denied petitioner's prayer for a 20-day restraining order and motion for reconsideration thereof, respectively.

The factual backdrop of the case is hereunder summarized:

Private respondent Air Materiel Wing Savings and Loan Association, Inc. ("AMWSLAI") is a corporation duly organized and existing under and by virtue of the laws of the Philippines. Under its *By-Laws*<sup>[3]</sup>, the eleven (11) members of its Board of Trustees (Board) shall hold office for a term of three (3) years.<sup>[4]</sup>

Conceding to the clamor for a new set of Trustees, petitioners and private respondents Col. Nolasco, Jr., Col. Estalilla, and Lt. Mercado, then members of the Board, cut short their terms and submitted *en masse* their letters of resignation.<sup>[5]</sup> Parenthetically, three (3) other members of the Board<sup>[6]</sup> had earlier resigned from their positions. In *Board Resolution No. 2005-353*<sup>[7]</sup> dated 7 September 2005, the Board accepted the mass resignation and declared vacant all the eleven (11) seats. The said *Resolution* likewise resolved the holding of a general election on 14 October 2005.

Pursuant to Article XIII of AMWSLAI *By-Laws*, the Board created a Committee on Elections ("AMWSLAI-COMELEC") composed of private respondents MGen. Rodolfo S. Estrellado (Ret.), as Chairman, and Col. Gregorio G. Paduganan and Lt. Col. Rolando G. Jungco as Members.

Together with some other members of AMWSLAI, petitioners and private respondents Col. Nolasco, Jr., Col. Estalilla, Lt. Mercado, Col. Abad, BGen. Estepa, Col. Dimapilis Jr., Col. Gumba, Col. Tapac, Maj. Cacabelos, Lt. Toledanes, Lt. Perido and Lt. Reyes, filed their respective Certificates of Candidacy for the 14 October 2005 Election. Unfortunately, the AMWSLAI-COMELEC disqualified petitioners from being eligible to run in the election. Accordingly, notices of dis-qualification<sup>[8]</sup> were individually sent to them.

Having been placed in a disadvantageous position, petitioners then tried to withdraw their respective resignation on the ground that it was tendered upon understanding "that there would be a fair and honest election on October 14, 2005". It appears however, that the withdrawals were not acted upon by the former Board.

Left with no other recourse, petitioners filed on 12 October 2005 a *Petition*<sup>[9]</sup> for *Election Protest With Prayer for a Writ of Preliminary Injunction/Prohibition and/or Temporary Restraining Order* before the Regional Trial Court (RTC) of Pasay City against the AMWSLAI-COMELEC represented by MGen. Rodolfo S. Estrellado (Ret.), Col. Gregorio G. Paduganan and Lt. Col. Rolando G. Jungco; and AMWSLAI. The *Petition* seeks to enjoin the AMWSLAI-COMELEC from disqualifying them as candidates and to stop the holding of the 14 October 2005 Election. Petitioners alleged therein that the act of AMWSLAI-COMELEC disqualifying them to run from office is unwarranted because the alleged violations which became the basis for disqualification are still under investigation by the Bangko Sentral ng Pilipinas (BSP), and that on 29 September 2005 the AMWSLAI-COMELEC Chairman even wrote to BSP inquiring whether or not they (petitioners) are qualified to run.<sup>[10]</sup>

Also on even date, petitioners filed an *Ex-Parte Motion for Immediate/Special Raffle and/or Cognizance and Issuance of An Ex-Parte Temporary Restraining Order*.<sup>[11]</sup>

On **13 October 2005**, Executive Judge Caridad Grecia-Cuerdo of RTC-Pasay City issued an *Order*<sup>[12]</sup> granting petitioners' prayer for a 72-hour Temporary Restraining Order (TRO), as follows:

"The petitioners have fully established to the satisfaction of this Court that if the holding of the "GENERAL ELECTIONS" of the members of the Board of Trustees of AMWSLAI, scheduled on October 14, 2005 from 8:00 a.m. to 5:00 p.m. will not be enjoined or restrained, they stand to suffer grave injustice and irreparable injury. The matter is also of extreme urgency taking into consideration that the act sought to be enjoined/restrained is scheduled to be held tomorrow, October 14, 2005.

WHEREFORE, an Executive Temporary Restraining Order is hereby issued for a period of 72 hours from today, restraining the Respondents from holding and/or conducting the subject election scheduled on October 14, 2005 at 8:00 a.m. to 5 p.m. This is without prejudice to the provision of

Section 5, Rule 58 of the 1997 Rules of Court. The Clerk of Court and Ex-Officio Sheriff or any her Deputy Sheriff is hereby ordered to cause the implementation of this Order. Service of the required notice of hearing shall be served by the commercial court to which this case will be assigned."

On the same date, Sheriff Virgilio Villar served copies of the *Summons* (with copy of Complaint and its Annexes), *Notice of Raffle* and the *72-Hour TRO*, at the AMWSLAI Building, thru Ms. Kathy Liong, an "*authorized receiving personnel*", as shown in the *Sheriff's Return*<sup>[13]</sup>, which, for easy reference is hereunder reproduced.

#### "SHERIFF'S RETURN

This is to certify that on this date October 13, 2005, undersigned Sheriff IV, caused the service of Summons together with the attached Complaint and its Annexes, copy of Order dated October 13, 2005 and Notice of Raffle dated October 13, 2005 in connection with the above-entitled case upon defendants, THE COMMITTEE ON ELECTIONS OF AIR MATERIEL WING SAV. AND LOAN ASSOC., MAJ. GEN. RODOLFO S. ESTRELLADO, COL. GREGORIO G. PADUGANAN, LTC. ROLANDO G. JUNGCO AND AIR MATERIEL WING SAV. AND LOAN ASSOC., INC. all of AMWSLAI BLDG., cor. B. Serrano and 18th St., Murphy Quezon City, thru MS. KATHY LIONG, AMWSLAI's authorized receiving personnel who personally received copies of said Court Processes on behalf of all the above-named defendants as shown by her signature appearing on the original copy of summons, Order and Notice of Raffle."

However, in an interesting turn of events, Ms. Katheryn "Kathy" Liong returned all the pleadings/notices and orders in the afternoon of the same day at the Office of the Clerk of Court of the RTC, Pasay City. In her letter<sup>[14]</sup>, Ms. Liong stated that she is "*returning the . . . documents . . . which w(ere) mistakenly left with (her) . . . because (she is) not authorized to receive the copies on behalf of the other defendants, MAJ GEN RODOLFO S ESTRELLADO (RET), COL. GREGORIO G PADUGANAN AND LTC ROLANDO G. JUNGCO.*"

The following day, public respondent, then Presiding Judge of Branch 117, RTC, Pasay City (where the case was subsequently raffled) conducted a hearing on the application for the 20-day Temporary Restraining Order (TRO). Counsels for petitioners and AMSLAI appeared. On the other hand, intervenor Atty. Fe Padilla, one of the candidates for the Board, entered her appearance on her behalf.

Immediately after the hearing, public respondent issued the assailed first assailed Order denying the issuance of a TRO upon a finding that summonses were not properly served upon the representatives of AMWSLAI-COMELEC. The public respondent reasoned?

"Only natural or juridical persons, or entities authorized by law may be parties in a civil action" (Sec. 1, Rule 3). The Committee on Election (COMELEC) of AMWSLAI is indisputably not a juridical person or an entity authorized by law to be a party to a suit. Hence, it cannot be a party to an action and is thus erroneously impleaded in the instant case. Only Maj. Gen. Estrellado, Col. Paduganan and LTC Jungco as constituting the COMELEC may be properly impleaded.

In the matter of service of summons upon Maj. Gen. Estrellado, Col. Paduganan and LTC Jungco, the following are the applicable rules:

*"Sec. 6. Service in person on defendant. – Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.*

*"Sec. 7. Substituted Service. – If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section. Service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof."*

The Sheriff's return of the summons states that the summons, the copies of the petition and the TRO intended for these individual respondents were served not upon them personally in violation of Section 6. They were served upon Katheryn R. Liong, an HR Specialist of AMWSLAI. Nothing is thus far shown that all these individual respondents hold office or conduct business in the place where Ms. Liong works and that Ms. Liong is in charge thereof.

Substituted service may be availed of for justifiable cause. But the impossibility of personal service should be explained in the proof of service showing that efforts were exerted therefore, hence the resort to substituted service (Keister vs. Navarro, et al., L-29067, May 31, 1977) and such facts must be reported in the proof of service, otherwise the substituted service is invalid (Busuego vs. Court of Appeals, et al., L-48955, June 30, 1971; Venturanza vs. Court of Appeals, et al., G.R. No. 77760, December 11, 1987).

These individual respondents are the ones conducting the elections sought to be restrained. They are the real objects of this court's temporary restraining order. Unfortunately, no summons, no petition, and no restraining order were served upon them. In fine, this court has not acquired jurisdiction over these persons. Worse, as the petitioners themselves admit, the elections were held and presumably carried on to its final conclusion. There is thus nothing left to be restrained."

Meanwhile, on 19 October 2005, Sheriff Villar submitted a *Supplemental Sheriff's Report*<sup>[15]</sup> explaining the resort to substituted service. Being material to the resolution of this petition, pertinent portions of the said report are quoted below:

"THIS IS TO CERTIFY that when the undersigned sheriff caused the service of the Summons, together with a copy of the Complaint therewith accompanying, Order dated October 13, 2005 and the Notice of Raffle upon the respondents at the given address on October 13, 2005, diligent efforts were exerted to cause the personal service of the same in accordance with Sections 6 and 11, Rule 14, of the 1997 Rules of Civil

Procedure despite the time constraint inherent upon the case.

However, despite such efforts, respondents Maj. Gen. Rodolfo Estrellado, Col. Gregorio Paduganan, and LTC Rolando G. Jungco could not be found, while the officers authorized by the Rules of Court to receive in behalf of respondents COMELEC of AMWSLAI and those of AMWSLAI itself are likewise not available at the same time.

Upon inquiry inside the AMWSLAI office, the undersigned was pointed to the office of Ms. Kathy Liong who was said to be authorized to receive documents for the respondents.

As the above-stated documents were shown and explained to said Ms. Kathy Liong, the latter confirmed that she is the one authorized by their office (AMWSLAI) to receive such documents and further confirmed that she is also authorized to receive the same for and in behalf of respondents Maj. Gen. Rodolfo Estrellado, Col. Gregorio Paduganan, and LTC Rolando G. Jungco and of the COMELEC OF AMWSLAI.

Thus, the undersigned caused the service of the aforesaid documents to the respondents, all thru Ms. Liong, who acknowledged receipt thereof by affixing her signature on the stamp "RECEIVED" which she placed on the upper right hand of the original of each of said documents thus served.

. . .

It bears to stress that the said documents were not mistakenly left but was actually served upon the respondents, thru Ms. Liong, upon her confirmation that she is authorized to receive such. Whatever made her change her mind or which made her later decide that she is not authorized to receive these documents is beyond my knowledge and is already beyond the scope of my duties because I have already returned the said documents to the Court of origin."

Forthwith, petitioners filed a *Motion to Recall Order Declaring Non-Service of Order*<sup>[16]</sup>, which virtually sought reconsideration of the *Order* denying the issuance of the TRO. The motion was denied in the second assailed *Order*<sup>[17]</sup> dated 28 October 2005.

Hence, this petition.

Petitioners argue in main that contrary to the findings of the public respondent, the court properly acquired jurisdiction over the persons of the private respondents because the summonses were properly served on them.

**We agree. We find the petition meritorious.**

At the outset, We find it necessary to reiterate the following relevant facts demonstrative of AMSLAI-COMELEC's bad faith in dealing with petitioners. Petitioners and private respondents Col. Nolasco, Jr., Col. Estalilla, and Lt. Mercado, then members of the AMWSLAI Board, undeniably cut short their terms to give way to the conduct of early election. The former Board even expressed its appreciation