

## CORPORATION LAW UPDATE

In *Raul C. Cosare v. Broadcom Asia Inc. and Dante Arevalo* (G.R. No. 201298, February 5, 2014), the Supreme Court held that the mere fact that an employee was a stockholder and an officer at the time he was illegally dismissed will not necessarily make the case an intra-corporate dispute.

Broadcom Asia Inc. (Broadcom) is engaged in the business of selling broadcast equipment needed by television networks and production houses. One of its incorporators was Raul Cosare, having been assigned 100 shares of stock.

In October 2001, Cosare was promoted to the position of Assistant Vice President for Sales and Head of the Technical Coordination. In 2009, however, Cosare was asked to tender his resignation in exchange for “financial assistance” in the amount of ₱300,000.00. He refused to comply with the directive.

Thereafter, Cosare received a memo charging him of serious misconduct and wilful breach of

## ASSISTANT VICE PRESIDENT NOT A CORPORATE OFFICER

trust and was, thus, suspended from having access to any and all company files/records and use of company assets. He was likewise barred from entering the company premises and prevented from retrieving his personal belongings. Aggrieved, Cosare filed a labor complaint against Broadcom claiming that he was constructively dismissed from his employment.

The Labor Arbiter dismissed the complaint on the ground that Cosare failed to establish that he was constructively dismissed. On appeal, the NLRC reversed the Labor Arbiter’s decision.

Broadcom assailed the NLRC’s ruling, raising the new argument that the case involved an intra-corporate controversy and thus, within the jurisdiction of the RTC and not of the Labor Arbiter.

The CA granted Broadcom’s petition and agreed that the case involved an

intra-corporate controversy which, pursuant to Presidential Decree No. 902-A, as amended, was within the exclusive jurisdiction of the RTC. The CA found that Cosare was indeed a stockholder of Broadcom, and that he was listed as one of the directors. Moreover, he held the position of AVP for Sales which is listed as a corporate office.

The Supreme Court reversed the CA and explained the definition of corporate officers for the purpose of identifying an intra-corporate controversy. Citing *Garcia v. Eastern Telecommunications Philippines Inc.* (G.R. No. 173115, April 16, 2009), the Court said that corporate officers, in the context of PD 902-A, are those officers of the corporation who are given that character by the Corporation Code or by the corporation’s by-laws. The Court further held that an “office” is created by the charter of the cor-

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poration and the officer is elected by the directors and stockholders of the corporation.

Thus, the Court explained that two circumstances must concur in order for an individual to be considered a corporate officer, namely: (1) the creation of the position is under the corporation's by-laws; and (2) the election of the officer is by the directors or stockholders. It is only when the officer claiming to have been illegally dismissed is classified as such corporate officer that the issue is deemed an intra-corporate dispute which falls within the jurisdiction of the trial courts.

In *Cosare*, Broadcom failed to sufficiently establish that the position of AVP for Sales was created by virtue of an act of its board of directors, and that Cosare was specifically elected or appointed to such position by the directors.

Considering that the dispute particularly relates to Cosare's rights and obligations as a regular officer of Broadcom, instead of a stockholder of the corporation, the controversy cannot be deemed intra-corporate, the Court concluded. *LF*©April 4, 2014

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