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REPUBLIC OF THE PHILIPPINES
Supreme Court
Manila

THIRD DIVISION

[G.R. No. 210906, October 16, 2019]

AGO REALTY & DEVELOPMENT CORPORATION (ARDC), EMMANUEL F. AGO, AND CORAZON CASTAÑEDA-AGO, PETITIONERS, V. DR. ANGELITA F. AGO, TERESITA PALOMA-APIN, AND MARIBEL AMARO, RESPONDENTS.

[G.R. No. 211203, October 16, 2019]

DR. ANGELITA F. AGO, PETITIONER, V. AGO REALTY & DEVELOPMENT CORPORATION, EMMANUEL F. AGO, CORAZON C. AGO, EMMANUEL VICTOR C. AGO, AND ARTHUR EMMANUEL C. AGO, RESPONDENTS.

D E C I S I O N

A. REYES, JR., ***J.:***

Grounded on equity, the derivative suit has proven to be an effective tool for the protection of minority shareholders. Such actions have for their object the vindication of a corporate injury, even though they are not brought by the corporation, but by its stockholders. That said, derivative suits remain an exception. As a general rule, corporate litigation must be commenced by the corporation itself, with the imprimatur of the board of directors, which, pursuant to the law, wields the power to sue. Therefore, since the derivative suit is a remedy of last resort, it must be shown that the board, to the detriment of the corporation and without a valid business consideration, refuses to remedy a corporate wrong. A derivative suit may only be instituted after such an omission. Simply put, derivative suits take a back seat to board-sanctioned litigation whenever the corporation is willing and able to sue in its own name.

On appeal are the September 26, 2013 Decision[1] and the January 10, 2014 Resolution[2] rendered by the Court of Appeals (CA) in CA-G.R. CV No. 99771.

The Factual Antecedents

Petitioner Ago Realty & Development Corporation (ARDC) is a close corporation.[3] Its stockholders are petitioner Emmanuel F. Ago (Emmanuel); his wife, petitioner Corazon C. Ago (Corazon); their children, Emmanuel Victor C. Ago and Arthur Emmanuel C. Ago (collectively Emmanuel, et al.); and Emmanuel's sister, respondent Angelita F. Ago (Angelita). Per ARDC's General Information Sheet,[4] their respective stockholdings are as follows:

	Number of Subscribed Shares	Amount
Emmanuel	2,498	P249,800.00
Corazon	1,000	P100,000.00
Victor	1	P100.00
Arthur	1	P100.00
Angelita	1,500	P150,000.00

TOTAL	5,000	P500,000.00

This controversy arose when **Angelita introduced improvements on Lot No. H-3, titled in the name of ARDC, without the proper resolution from the corporation's Board of Directors.** The improvements also encroached on Lot No. H-1 and Lot No. H-2, which also belonged to ARDC.[5]

Consequently, on August 11, 2006, ARDC and Emmanuel, et al. filed a complaint[6] before the Legazpi City Regional Trial Court (RTC). They essentially alleged that Angelita, in connivance with Teresita P. Apin (Teresita), Maribel Amaro (Maribel), and certain local officials of Legazpi City, introduced unauthorized improvements on corporate property. For her part, Teresita was accused of operating a restaurant named "Kicks Resto Bar" in the improvements,[7] while Maribel was impleaded as Angelita's employee.[8] On the other hand, the local officials were impleaded as defendants since they were responsible for issuing the permits relative to the improvements introduced by Angelita and the business concerns thereon.[9]

On September 15, 2006, Teresita filed her answer. She denied all the material allegations and averred that her restaurant was operating not on Lot No. H-3, as stated in the complaint, but on Lot No. 1-B, which is not ARDC's property.[10]

On February 9, 2007, after their motion to dismiss was denied,[11] Angelita and Maribel filed their answer.[12] Angelita admitted to introducing improvements on the subject lots. She narrated that sometime in the 1960s, Emmanuel and Corazon immigrated to the United States, leaving the management of ARDC's properties to her. She thus took control of the corporation's properties and introduced improvements thereon, particularly a semi-permanent multipurpose structure[13] and a fence designed to protect the lot.[14]

Angelita further claimed that the suit was brought because she refused to heed to Emmanuel's demand that she buyout his shares in ARDC for $6,000,000.00. After she failed to satisfy the unreasonable demand, Emmanuel, through two letters sent by counsel, allegedly accused her of introducing improvements on ARDC's property and allowing Teresita to operate a restaurant business thereon, without the necessary authorization from the corporation's Board of Directors. For such acts, Emmanuel supposedly demanded damages amounting to P10,000,000.00.[15]

Anent Maribel's inclusion as defendant, it was argued that the plaintiffs had no cause of action against her since the complaint failed to point out any act for which she should be held accountable. Being a mere employee of Angelita, she had no participation in the acts complained of. [16]

Notably, a defense common to all the defendants was that ARDC never authorized the institution of the suit. Without a resolution emanating from the corporation's Board of Directors, it was argued that Emmanuel, et al. had no legal standing to bring the case since the lots in question belonged to ARDC.

On July 24, 2007, the local officials of Legazpi City were dropped as defendants on motion of Emmanuel, et al. Hence, the case against them was dismissed.[17]

After the pre-trial conference was terminated on July 31, 2007, trial on the merits ensued.[18]

The RTC's Ruling

On September 20, 2012, the RTC rendered a Decision[19] dismissing the complaint and holding Emmanuel and Corazon jointly and severally liable for damages. Finding ARDC to be the real party in interest, the trial court ruled that the plaintiffs had no cause of action.[20] Since Emmanuel, et al. brought the case without the proper resolution from the Board of Directors,[21] it was held that they were not authorized to sue on behalf of the corporation.[22] The RTC gave consideration to the undisputed fact that the properties in litigation belonged to ARDC, concluding that Emmanuel, et al., in their individual capacities, were not the real parties in interest.[23]

Next, the trial court found that Teresita's restaurant business was not operating on ARDC's property. The finding was based on Corazon's admission that the restaurant was built on Lot No. 1-B, contrary to what was alleged in the complaint.[24]

Lastly, the suit was held to be baseless, thus entitling the defendants to damages and attorney's fees.[25] Angelita was awarded moral damages since Emmanuel's claims caused her embarrassment and tarnished her reputation in Bicol. Maribel was likewise awarded moral damages because the suit took her by surprise, made her restless, resulted in a rise in her blood pressure, and caused her to figure in an accident.[26] However, Teresita's claim for moral and exemplary damages failed, as she did not take the witness stand.[27] Nevertheless, she,[28] Angelita, and Maribel[29] were awarded attorney's fees on the ground that the action was clearly unfounded.

The fallo of the RTC's Decision reads:

> **WHEREFORE**, in view of the foregoing, the court hereby orders:
>
> 1. That the herein-entitled complaint be **DISMISSED** as it is hereby **DISMISSED** and
>
> 2. That Emmanuel F. Ago and Corazon Casta[ñ]eda-Ago be ordered to pay jointly and solidarily the following in damages:
>
> A. To Teresita Paloma Apin, the amount of P150,000.00 in attorney's fees;
>
> B. To each of Dr. Angelita F. Ago and Maribel Amaro, the amount of P100,000.00 in moral damages; and,
>
> C. To both Dr. Angelita F. Ago and Maribel Amaro, the amount of P200,000.00 in attorney's fees.
>
> **SO ORDERED.**[30] (Emphasis in the original)

The CA's Ruling

On September 26, 2013, the CA rendered the herein assailed Decision affirming the RTC's ruling anent the plaintiffs' lack of cause of action, but deleting the lower court's award of moral damages and attorney's fees. The appellate court held that the case partook of the nature of a derivative suit. As such, Emmanuel, et al. needed the imprimatur of ARDC's Board of Directors to institute the action.[31] While they were able to present a resolution purportedly authorizing the filing of the case, the CA refused to give credence thereto on the ground that the same was passed by the corporation's stockholders, and not its Board of Directors.[32]

As for the award of moral damages, the CA held that the case was not totally baseless considering that Angelita indeed introduced substantial improvements on ARDC's property. The filing of the case was thus held to be free from malicious intent.[33] Likewise, the award of attorney's fees was erroneous since there was no factual or legal basis for its grant.[34]

The CA, therefore, disposed of the case, *viz*.:

> **WHEREFORE**, the Decision dated September 20, 2012 of the Regional Trial Court of Legazpi City, Branch 1, in Civil Case No. 10585 is **AFFIRMED** WITH **MODIFICATION**, in that, the award of moral damages and attorney's fees in favor of the defendants-appellees is DELETED.
>
> **SO ORDERED.**[35] (Emphasis in the original)

After the CA denied their respective motions for reconsideration through the herein assailed Resolution, ARDC, Emmanuel, and Corazon,[36] on the one hand, and Angelita,[37] on the other, filed the instant consolidated petitions for review on certiorari, raising the following issues:

The Issues

In G.R. No. 210906 (filed by ARDC and Emmanuel, et al.):

Whether or not Emmanuel, et al. may sue on behalf of ARDC absent a resolution or any other grant of authority from its Board of Directors sanctioning the institution of the case.[38]

In G.R. No. 211203 (filed by Angelita):

Whether or not the grant of moral damages and attorney's fees in favor of Angelita is warranted.[39]

The Court's Ruling

The petitions have no merit. Hence, the CA's decision stands.

The historical development of corporation law in the Philippines

Towards the end of the Spanish occupation, the application of the Spanish Code of Commerce was extended to the Philippine Islands.[40] This introduced the sociedad anónima, a juridical entity formed "upon the execution of the public instrument in which its articles of agreement appear, and the contribution of funds and personal property."[41] Just as today's corporations, sociedades anónimas could own and deal in property, as well as sue and be sued.[42]

With the conclusion of the Treaty of Paris, Spain ceded the Philippines to the United States.[43] The Americans brought with them their notion of the corporation through the enactment of Act No. 1459, "a sort of codification of

American corporate law."[44] Their attention was caught by the fact that Spanish law did not provide for an entity that was precisely equivalent to the American or English corporation.[45] To them, the sociedad anónima was an inadequate business medium.

Appropriately named the Corporation Law, Act No. 1459 took effect on April 1, 1906 and was to serve as the principal corporate regulatory statute for the next 74 years. The law defined a corporation as "an artificial being created by operation of law, having the right of succession and the powers, attributes, and properties expressly authorized by law or incident to its existence,"[46] a definition that is still used to this day. It contained special provisions expressly penalizing the employment of persons in involuntary servitude[47] and the unlicensed transaction of business by a foreign corporation.[48]

However, as Act No. 1459 was unable to keep up with modern commerce, it was replaced by Batas Pambansa Blg. 68, otherwise known as the Corporation Code. The new law codified various jurisprudential pronouncements made under its predecessor, clarified the obligations of corporate directors and officers, and defined close corporations, providing special rules for their formation and the ownership of their stock. It also dispensed with the old restrictions pertinent to agricultural and mining corporations, the limitations on corporate ownership of real property, and the penal clauses integrated into certain provisions of the law.[49]

The Corporation Code was the law in effect at the time the factual antecedents of this case occurred.

The most recent edition of our corporation law came with the passage of Republic Act No. 11232, or the Revised Corporation Code, which took effect on February 23, 2019. This new piece of legislation introduced many significant changes to the corporate regulatory regime in this jurisdiction. Notably, it removed the requirement to incorporate with at least five incorporators,[50] the minimum capitalization requirement for stock corporations,[51] and the 50-year limit on the duration of the corporate term.[52] Also, in an effort to strengthen corporate governance, the new law requires corporations imbued with public interest to allocate a certain percentage of their board seats to independent directors,[53] as well as to elect a compliance officer to ensure adherence to all relevant laws and regulations.[54]

Corporate powers are exercised by the board of directors

If there is one constant that has been observed from the introduction of the Spanish Code of Commerce to the enactment of the Revised Corporation Code, it is that "[c]orporations are creatures of the law."[55] They owe their existence to the sovereign powers of the State, exercised by the Legislature, which—by general law or, in certain instances, direct act—prescribes the manner of their formation or organization.[56] Throughout their lifetimes, corporations are subject to a plethora of regulatory requirements, such as those involving annual reports,[57] voting in stockholders' or directors' meetings,[58] and, depending on the industry where the firm operates, limitations on foreign ownership.[59] As so aptly put in Ang Pue & Co., et al. v. Sec. of Comm. and Industry,[60] "[t]o organize a corporation x x x is not a matter of absolute right but a privilege which may be enjoyed only under such terms as the State may deem necessary to impose."[61]

While corporations are subjected to the State's broad regulatory powers, it is their directors and officers who are tasked with addressing questions of internal policy and management.[62] The business of a corporation is conducted by its board of directors, and so long as the board acts in good faith, the State, through the courts, may not interfere with its management decisions.[63] This finds support in Section 23 of the Corporation Code, which provides that a corporation exercises its powers, conducts its business, and controls and holds its property through its board of directors.[64]

As creatures of the law, corporations only possess those powers that are granted through statute, either expressly or by way of implication, or those that are incidental to their existence.[65]

One of the powers expressly granted by law to corporations is the power to sue.[66] As with other corporate powers, the power to sue is lodged in the board of directors, acting as a collegial body.[67] Thus, in the absence of any clear authority from the board, charter, or by-laws,[68] no suit may be maintained on behalf of the corporation. A case instituted by a corporation without authority from its board of directors is subject to dismissal on the ground of failure to state a cause of action.[69]

In certain instances, however, the stockholders may sue on behalf of the corporation

As an exception[70] to the foregoing rule, jurisprudence has recognized certain instances when minority stockholders may bring suits on behalf of corporations.[71] Where the board of directors itself is a party to the wrong, either because it is the author thereof or because it refuses to take remedial action, equity permits individual stockholders to seek redress.[72] These actions have come to be known as derivative suits. In Chua v. Court of Appeals,[73] the Court defined a derivative suit as "a suit by a shareholder to enforce a corporate cause of action."[74]

In derivative suits, it is the corporation that is the victim of the wrong. As such, it is the corporation that is properly regarded as the real party in interest, while the relator-stockholder is merely a nominal party.[75] The corporation must

be impleaded so that the benefits of the suit accrue to it and also because it must be barred from bringing a subsequent case against the same defendants for the same cause of action.[76] Stated otherwise, the judgment rendered in the suit must constitute *res judicata* against the corporation, even though it refuses to sue through its board of directors.[77]

That said, not every wrong suffered by a stockholder involving a corporation will vest in him or her the standing to commence a derivative suit.[78] In Cua, Jr., et al. v. Tan, et al.,[79] the Court explained when such actions lie, *viz*.:

Suits by stockholders or members of a corporation based on wrongful or fraudulent acts of directors or other persons may be classified into individual suits, class suits, and derivative suits. Where a stockholder or member is denied the right of inspection, his suit would be individual because the wrong is done to him personally and not to the other stockholders or the corporation. Where the wrong is done to a group of stockholders, as where preferred stockholders' rights are violated, a class or representative suit will be proper for the protection of all stockholders belonging to the same group. But where the acts complained of constitute a wrong to the corporation itself, the cause of action belongs to the corporation and not to the individual stockholder or member. Although in most every case of wrong to the corporation, each stockholder is necessarily affected because the value of his interest therein would be impaired, this fact of itself is not sufficient to give him an individual cause of action since the corporation is a person distinct and separate from him, and can and should itself sue the wrongdoer. Otherwise, not only would the theory of separate entity be violated, but there would be multiplicity of suits as well as a violation of the priority rights of creditors. Furthermore, there is the difficulty of determining the amount of damages that should be paid to each individual stockholder.

However, in cases of mismanagement where the wrongful acts are committed by the directors or trustees themselves, a stockholder or member may find that he has no redress because the former are vested by law with the right to decide whether or not the corporation should sue, and they will never be willing to sue themselves. The corporation would thus be helpless to seek remedy. Because of the frequent occurrence of such a situation, the common law gradually recognized the right of a stockholder to sue on behalf of a corporation in what eventually became known as a "derivative suit." It has been proven to be an effective remedy of the minority against the abuses of management. Thus, an individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stock in order to protect or vindicate corporate rights, whenever officials of the corporation refuse to sue or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as the nominal party, with the corporation as the party in interest.[80] (Emphasis and underscoring supplied)

Here, the CA held that since the cause of action belongs to ARDC, the properties in question being titled in its name, the case instituted by Emmanuel, et al. was derivative in nature. As such, they should have first secured a board resolution authorizing them to bring suit.[81] Emmanuel, et al. counter, arguing that a derivative suit does not require the imprimatur of the board of directors.[82] Since, in derivative suits, the corporation is usually under the control of the wrongdoers, it would be absurd to require the stockholders to obtain board authority prior to the commencement of litigation.

Emmanuel et al. are correct.

A board resolution is not needed for the institution of a derivative suit

The record reveals that the complaint a quo was filed by Emmanuel, et al. While the caption states that ARDC was also one of the plaintiffs, there is nothing showing that the corporation's Board of Directors had authorized the filing of the case. Thus, the case is deemed as instituted by Emmanuel, et al. without ARDC's acquiescence.

As discussed above, the corporate power to sue is exercised by the board of directors. For this purpose, the board may authorize a representative of the corporation to perform all necessary physical acts, such as the signing of documents.[83] Such authority may be derived from the by-laws or from a specific act of the board of directors, i.e., a board resolution.[84]

In Rep. of the Phils. v. Coalbrine Int'l. Phils., Inc., et al.,[85] the Court dismissed a complaint for damages instituted by a corporation because the managing director who signed the certification against forum shopping failed to show that the board of directors authorized her to do so. Ruling that the lack of such certification was prejudicial to the corporation's cause, the Court held that the managing director should have first obtained a valid board resolution sanctioning the filing of the case and the signing of the certification.

However, in derivative suits, the recognized rule is different. Since the board is guilty of breaching the trust reposed in it by the stockholders, it is but logical to dispense with the requirement of obtaining from it authority to institute the case and to sign the certification against forum shopping. It has been held that when "the corporation x x x is under the complete control of the principal defendants in the case, x x x it is obvious that a demand upon the [board] to institute an action and prosecute the same effectively would [be] useless, and the law does not require litigants to perform useless acts."[86] Thus, the institution of a derivative suit need not be preceded by a board resolution.

But, given that authority from the board of directors can be dispensed with in derivative suits, can the case filed by Emmanuel, et al. even be classified as such in the first place?

Emmanuel, et al. argue that they have the right to file a derivative suit on behalf of ARDC.[87] Since the corporation was the victim of the wrong committed by Angelita, i.e., the introduction of improvements on its property without its consent, a derivative suit lies as the appropriate remedy.

On this score, they err.

The derivative suit is an equitable remedy and one of last resort

The right of stockholders to bring derivative suits is not based on any provision of the Corporation Code or the Securities Regulation Code, but is a right that is implied by the fiduciary duties that directors owe corporations and stockholders.[88] Derivative suits are, therefore, grounded not on law, but on equity.[89]

In Hi-Yield Realty, Incorporated v. Court of Appeals, et al.,[90] a corporation, through its controlling stockholder and without authority from its board of directors, entered into loan obligations that later led to the foreclosure of its property. A minority stockholder then instituted a petition to annul the subject mortgage deeds and the consequent foreclosure sales. The complaint alleged that the suing minority stockholder had been excluded from corporate affairs and that attempts between him and the other stockholders to compromise the case had failed. Since the board of directors did nothing to rectify the corporation's questionable transactions, the Court allowed the institution of the complaint as a derivative suit.

In Gochan v. Young,[91] minority stockholders instituted a complaint against directors and officers who appropriated for themselves corporate funds through excessive salaries and cash advances. It was stated that the capital of the corporation was impaired, as the firm was prevented from using its own funds in the conduct of its regular business. The Court held that the suit was correctly classified as derivative in nature since the relator-stockholders had clearly alleged injury to the corporation. The fact that the plaintiffs alleged damage to themselves in their personal capacities on top of the damage done to the corporation merely gave rise to an additional cause of action, but it did not disqualify them from filing a derivative suit.

In San Miguel Corporation v. Kahn,[92] a significant number of shares of San Miguel Corporation (SMC) were acquired by 14 other companies. SMC tried to repurchase shares through its wholly-owned foreign subsidiary, Neptunia Corporation Limited (Neptunia). However, the shares had been sequestered by the Presidential Commission on Good Government (PCGG) on the ground that they were owned by one of the cronies of former President Ferdinand E. Marcos. Later, SMC's Board of Directors passed a resolution assuming Neptunia's liability for the purchase of the subject shares. The board opined that there was nothing illegal about the assumption of liability since Neptunia was wholly-owned by SMC. Subsequently, Eduardo de los Angeles (De los Angeles), director and minority stockholder of SMC, brought a derivative suit challenging the board resolution as constituting an improper use of corporate funds. When the case reached the Court, it was held that De los Angeles had properly resorted to a derivative suit. It was of no moment that he owned only 20 SMC shares or that he was elected to the board of directors by the PCGG. Since the case concerned the validity of the assumption by SMC of the indebtedness of Neptunia, a cause of action that indeed belonged to the former corporation, the Court held that De los Angeles could maintain the suit on behalf of SMC.

Despite derivative suits being grounded on equity, they cannot prosper in the absence of any or some of the requisites enumerated in the Interim Rules of Procedure for Intra-Corporate Controversies,[93] *viz*.:

Rule 8
DERIVATIVE SUITS

Section 1. Derivative action. - A stockholder or member may bring an action in the name of a corporation or association, as the case may be, provided, that:

> (1) He was a stockholder or member at the time the acts or transactions subject of the action occurred and the time the action was filed;
>
> (2) He exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires;
>
> (3) No appraisal rights are available for the acts or acts complained of; and
>
> (4) The suits is not a nuisance or harassment suit.[94]

The second requisite does not obtain in this case.

Before instituting a derivative suit, the relator-stockholder must exert all reasonable efforts to exhaust all remedies available under the articles of incorporation, the by-laws, and the laws or rules governing the corporation or partnership to obtain the relief he or she desires. Such fact must then be alleged with particularity in the complaint.[95] "The obvious intent behind the rule is to make the derivative suit the final recourse of the stockholder, after all other remedies to obtain the relief sought had failed."[96]

In their petition, Emmanuel, et al. allege that they exerted all reasonable efforts to exhaust all remedies available to them. They point to the fact that they invited Angelita to a meeting to amicably settle the dispute.[97] Indeed, the record shows that Emmanuel, Corazon, and Angelita came together for a special stockholders' meeting on August 11, 2006. However, their attempt to resolve the dispute turned sour when Angelita walked out before the meeting even started.[98]

Contrary to the postulation of Emmanuel and Corazon, their attempt to settle the dispute with Angelita can hardly be considered "all reasonable efforts to exhaust all remedies available."

In Yu, et al. v. Yukayguan, et al.,[99] the Court rejected the argument that attempts between stockholders to amicably settle a corporate dispute constitute "all reasonable efforts to exhaust all remedies available." It was held that:

The allegation of respondent Joseph in his Affidavit of his repeated attempts to talk to petitioner Anthony regarding their dispute hardly constitutes "all reasonable efforts to exhaust all remedies available." Respondents did not refer to or mention at all any other remedy under the articles of incorporation or by-laws of Winchester, Inc., available for dispute resolution among stockholders, which respondents unsuccessfully availed themselves of. And the Court is not prepared to conclude that the articles of incorporation and by-laws of Winchester, Inc. absolutely failed to provide for such remedies.[100]

More importantly, an apparent remedy available to Emmanuel, et al. was to cause ARDC itself, through its Board of Directors, to directly institute the case. Because of their controlling interest in the corporation, Emmanuel, et al. could have prevailed upon the board to pass a resolution authorizing any of them to file the case and sign the certification against forum shopping.

The derivative suit has proven to be an effective tool for the protection of the minority shareholder's corporate interest. It is essentially an exception to the rule that a wrong done to a corporation must be vindicated through legal action commenced by the board of directors.

Through the voting procedure found in the Corporation Code,[101] the majority shareholders exercise control over the board of directors. In Gamboa v. Finance Secretary Teves, et al.,[102] the Court, in no uncertain terms, declared that: "[i]ndisputably, one of the rights of a stockholder is the right to participate in the control or management of the corporation. This is exercised through his vote in the election of directors because it is the board of directors that controls or manages the corporation."[103] Hence, in the normal course of things, when a corporation is wronged, the board will readily litigate in order to protect the majority's corporate interests. For the minority, on the other hand, this may not be the case. There may be situations where a corporation is wronged, but the board of directors refuses to take remedial action. The board's refusal may be based on valid business considerations, such as that the costs of litigation exceed the potential judgment award. But in situations where the board's decision is tantamount to breaching the trust reposed in it by the minority, equity necessitates that the aggrieved stockholders be given a remedy. Thus, the minority, in a derivative capacity, may sue or defend[104] on behalf of the corporation.

Due to their control over the board of directors, the majority should not ordinarily be allowed to resort to derivative suits. Where a corporation under the effective control of the majority is wronged, board-sanctioned litigation should take precedence over derivative actions. After all, the law expressly vests the power to sue in the board of directors,[105] and a remedy based on equity, such as the derivative suit, can prevail only in the absence of one provided by statute.[106] In other words, majority stockholders who have undisputed corporate control cannot resort to derivative suits when there is nothing preventing the corporation itself from filing the case.

In the complaint they filed before the Legazpi City RTC, Emmanuel, et al. alleged that, together, they own 70% of ARDC's shares of capital stock.[107] In support of their allegation, they attached to their complaint the corporation's General Information Sheet,[108] which shows that, out of ARDC's 5,000 shares of stock, 3,500 belong to Emmanuel, et al. collectively, while only 1,500 belong to Angelita.

Clearly, the case before the RTC was instituted by the stockholders holding the controlling interest in ARDC. However, the wrong done directly to ARDC was a wrong done only indirectly to the inchoate corporate interests of Emmanuel, et al.[109] If ARDC truly desired to vindicate its rights, it should have done so through its Board of Directors. Considering the majority shareholdings of the plaintiffs a quo, their interests should have been protected by the board through affirmative action.

However, this could not happen because ARDC did not have a board of directors. On this point, the record is bereft of any showing that ARDC's stockholders ever met to elect its governing board. Before the trial court, Emmanuel

admitted that ARDC never held any stockholders' meetings from the time it was incorporated until 2005, *viz*.:

Q Mr. Ago, you would also agree with me that from 1989 until 2000 you had no meeting of stockholders in Ago Realty and Development Corporation?

A No.

Q Do you mean to say that you had meeting?

A There were no meetings.

Q Similarly in 2000, 2001, 2003 until 2005[,] there were no meetings of stockholders in Ago Realty and Development Corporation[?]

A No, there was no meeting.

Q And you would confirm or you would agree with me that there was no election likewise of Ago Realty and Development Corporation as far as its corporate officers are concerned?

A Yes.

Q And that was from 1989 until 2005?

A Yes.

Q Likewise, during that period from 1989 up to 2005[,] there were no board resolutions interpreted x x x or issued by Ago Realty and Development Corporation?

A No, there's no need.[110] (Citation omitted)

There is likewise no showing that ARDC held an election for its Board of Directors from 2005 until the filing of the complaint before the RTC. While Emmanuel, Corazon, and Angelita came together for a special stockholders' meeting on August 11, 2006, no election was held then. As mentioned earlier, Angelita walked out before the meeting started, and Emmanuel and Corazon were only able to pass a stockholders' resolution purportedly authorizing the institution of the instant case.[111] However, as amply discussed above, a corporation's power to sue is lodged in its board of directors. Hence, the resolution, not emanating from the board, was inefficacious.

The failure of ARDC's majority stockholders to elect a board of directors must be taken against them. To be sure, there was nothing preventing Emmanuel, et al. from holding a meeting for the purpose of electing a board, even in Angelita's absence or over her objection. It is admitted that the plaintiffs a quo hold a majority of ARDC's capital stock, by virtue of which they could have constituted a board to exercise the corporation's powers.[112] If they had done so, the instant case could have been instituted by ARDC itself.

The role of the board of directors is impressed with such importance that corporate business cannot properly be conducted without it

Being necessary to the legitimate operation of business, the board of directors is an organ that is indispensable to the corporate vehicle. If this case were allowed to prosper as a derivative suit, the non-election of boards of directors would be incenti*viz*ed, and the stability brought by "centralized management"[113] eroded. Majority shareholders cannot be allowed to bypass the formation of a board and directly conduct corporate business themselves. The Court cannot stress enough that the law mandates corporations to exercise their powers through their governing boards. Hence, if a person[114] or group of persons truly desires to conduct business through the corporate medium, then he, she, or they, as a matter of law, must form a board of directors. To allow Emmanuel, et al. to forego the election of directors, and directly commence and prosecute this case would not only downplay the key role of the board in corporate affairs, but also undermine the theory of separate juridical personality.

It is axiomatic that a corporation is an entity with a legal personality separate and distinct from the people comprising it.[115] Accordingly, a wrong done to a corporation does not vest in its shareholders a cause of action against the wrongdoer. Since the corporation is the real party in interest, it must seek redress itself. As stated above, a case instituted by the stockholders would be subject to dismissal on the ground that the complaint fails to state a cause of action.[116]

Here, because ARDC is the victim of the act complained of, the cause of action does not lie with Emmanuel, et al. The corporation should have filed the case itself through its board of directors. However, this could not be done since those responsible for the institution of this case never bothered to elect a governing body to wield ARDC's powers and to manage its affairs. Their omission cannot be without consequence. Verily, by virtue of their admitted controlling interest in ARDC, Emmanuel, et al. could have come together and formed a board of directors consisting of all five of the corporation's stockholders. Even without Angelita's participation, such a board would have been able

to validly conduct business[117] and, accordingly, could have sanctioned the filing of the complaint before the Legazpi City RTC. The aggrieved stockholders cannot now come before the Court, claiming that their remedy is a derivative suit. Their failure to elect a board ultimately resulted in their failure to exhaust all legal remedies to obtain the relief they desired. Since this case could have been brought by ARDC, through its board, its stockholders cannot maintain the suit themselves, purporting to sue in a derivative capacity. Emmanuel, et al. should not be allowed to use a derivative suit to shortcut the law.

Neither can Emmanuel, et al. take refuge in their assertion that ARDC is a close family corporation. They claim that the stockholders of a close corporation may take part in the active management of corporate affairs. Hence, they, as ARDC's stockholders, are legally invested with the power to sue for the corporation.

As correctly claimed, under Section 97 of the Corporation Code,[118] a close corporation may task its stockholders with the management of business, essentially designating them as directors. However, the law is clear that a close corporation must do so through a provision to that effect contained in its articles of incorporation. Nowhere in ARDC's Articles of incorporation[119] can such a provision be found. There is nothing that expressly or impliedly allows Emmanuel, et al. and Angelita, or any of them, to manage the corporation. Hence, the merger of stock ownership and active management that Emmanuel, et al. rely on cannot be applied to ARDC.

Further, assuming arguendo that ARDC is a close family corporation, the same cannot be considered a justification for noncompliance with the requirements for the filing of a derivative suit. In Ang v. Sps. Ang,[120] the Court declared:

The fact that [SMBI] is a family corporation does not exempt private respondent Juanito Ang from complying with the Interim Rules. In the x x x Yu case, the Supreme Court held that a family corporation is not exempt from complying with the clear requirements and formalities of the rules for filing a derivative suit. There is nothing in the pertinent laws or rules which state that there is a distinction between x x x family corporations x x x and other types of corporations in the institution by a stockholder of a derivative suit.[121] (Citation omitted)

The next contention of Emmanuel, et al. is that Emmanuel, as President of ARDC, had the authority to institute the case and sign the certification against forum shopping. In support of their argument, they point to the By-laws of ARDC, which provide that the President is authorized "[t]o represent the corporation at all functions and proceedings" and "[t]o perform such other duties as are incident in his office or are entrusted by the Board of Directors."[122] They assert that jurisprudence has consistently recognized the legal standing of the president to bring corporate litigation.[123]

The argument deserves scant consideration.

Emmanuel's designation as President was ineffectual because ARDC did not have a board of directors. Section 25 of the Corporation Code explicitly requires the president of a corporation to concurrently hold office as a director.[124] This only serves to further highlight the key role of the board as a corporate manager. By designating a director as president of the corporation, the law intended to create a close-knit relationship between the top corporate officer and the collegial body that ultimately wields the corporation's powers.

The lower courts correctly refused to award damages

Turning now to Angelita's petition, she argues that the CA erred in deleting the award of moral damages and attorney's fees. According to her, the case filed before the Legazpi City RTC was totally baseless and unfounded.[125] To support her assertion, she points to the fact that Emmanuel and Corazon sued without the authority of ARDC's Board of Directors.[126] Essentially, Angelita claims that the filing of the case a quo amounted to malicious prosecution.

The argument fails to persuade.

Jurisprudence has defined malicious prosecution as "an action for damages brought by one against whom a criminal prosecution, civil suit, or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein."[127] While generally associated with criminal actions, "the term has been expanded to include unfounded civil suits instituted just to vex and humiliate the defendant despite the absence of a cause of action or probable cause."[128] For an action based on malicious prosecution to prosper, it is indispensable that the institution of the prior legal proceeding be impelled or actuated by legal malice.[129]

Here, it was never shown that the institution of the case against Angelita was tainted with bad faith or malice. Since it is settled that she introduced improvements on ARDC's property without its consent, it follows that the complaint was not baseless at all. However, because the case was not brought by the corporation, but by its stockholders, its dismissal was properly decreed by the trial court.

The fact that Emmanuel, et al. brought the case without the consent of the corporation cannot be equivalent to malice. Surely, they could have elected a board of directors to run ARDC's affairs, but their failure to do so, coupled

with the filing of the complaint before the RTC, should not make them liable for moral damages. After all, the fact that a case is dismissed does not per se make that case one of malicious prosecution and subject the plaintiff to the payment of moral damages.[130] Since it is not a sound public policy to place a premium on the right to litigate, no damages can be charged on those who exercise such precious right in good faith, even if done erroneously.[131]

Neither does the Court see any cogent reason to award attorney's fees in favor of Angelita. Certainly, she only has herself to blame for the filing of the case before the RTC. If she did not introduce improvements on ARDC's property, Emmanuel et al. would have no reason to institute an action against her. Since she treated corporate property as if it was her own, she should have reasonably expected retaliatory action from the other shareholders. Hence, the CA was correct to delete the award of attorney's fees.

WHEREFORE, the September 26, 2013 Decision and January 10, 2014 Resolution rendered by the Court of Appeals in CA-G.R. CV No. 99771 are **AFFIRMED**.

SO ORDERED.

Peralta (Chairperson), Hernando, and Inting, JJ., concur.

Leonen, J., on wellness leave.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on October 16, 2019 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled cases, the original of which was received by this Office on December 20, 2019 at 10:55 a.m.

Very truly yours,

(Sgd.) MISAEL DOMINGO C. BATTUNG III
Deputy Division Clerk of Court

Footnotes

[1] Rollo (G.R. No. 210906), pp. 52-79. The assailed decision was penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Normandie B. Pizarro and Manuel M. Barrios concurring.

[2] *Id.* at 83-84.

[3] *Id.* at 172.

[4] *Id.* at 183.

[5] *Id.* at 169.

[6] *Id.* at 161-182.

[7] *Id.* at 171.

[8] *Id.* at 163.

[9] *Id.* at 165-172.

[10] *Id.* at 55.

[11] *Id.* at 56.

[12] *Id.*

[13] *Id.* at 57.

[14] *Id.* at 56-57.

[15] *Id.* at 58.

[16] *Id.*

[17] *Id.* at 59.

[18] *Id.*

[19] *Id.* at 248-264.

[20] *Id.* at 256.

[21] *Id.* at 253.

[22] *Id.* at 256.

[23] *Id.*

[24] *Id.* at 259.

[25] *Id.*

[26] *Id.* at 263.

[27] *Id.* at 261.

[28] *Id.*

[29] *Id.* at 263.

[30] *Id.* at 264.

[31] *Id.* at 72.

[32] *Id.* at 73.

[33] *Id.* at 77.

[34] *Id.* at 78.

[35] *Id.*

[36] *Id.* at 16-47.

[37] Rollo (G.R. No. 211203), pp. 43-77.

[38] Rollo (G.R. No. 210906), pp. 23-25.

[39] Rollo (G.R. No. 211203), p. 60.

[40] Philippine Corporate Law, Cesar L. Villanueva, p. 4 (2013).

[41] Mead v. McCullough, 21 Phil. 95, 106 (1911), cited in Villanueva.

[42] *Id.*

[43] Encyclopedia Britannica, Treaty of Paris visited October 10, 2019.

[44] Harden v. Benguet Consolidated Mining Co., 58 Phil. 141, 146 (1933).

[45] *Id.* at 145.

[46] Act No. 1459, Sec. 2.

[47] Act No. 1459, Sec. 15.

[48] Act No. 1459, Sec. 69.

[49] Philippine Corporate Law, Cesar L. Villanueva, pp. 7-8 (2013).

[50] REPUBLIC ACT No. 11232, Sec. 10.

[51] REPUBLIC ACT NO. 11232, Sec. 12.

[52] REPUBLIC ACT No. 11232, Sec. 11.

[53] REPUBLIC ACT No. 11232, Sec. 22.

[54] REPUBLIC ACT NO. 11232, Sec. 24.

[55] Cagayan Fishing Development Co., Inc. v. Sandiko, 65 Phil. 223, 227 (1937).

[56] Philippine Corporate Law, Cesar L. Villanueva, p. 17 (2013).

[57] See: Batas Pambansa Blg. 68, Sec. 141.

[58] See: Batas Pambansa Blg. 68, Secs. 49-59.

[59] See: REPUBLIC ACT No. 7042.

[60] 115 Phil. 629 (1962).

[61] *Id.* at 631-632.

[62] Phil. Stock Exchange, Inc. v. The Hon. CA, 346 Phil. 218, 234 (1997).

[63] *Id.*

[64] Sec. 23. The board of directors or trustees. -Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors x x x.

[65] Umale, et al. v. ABS Realty Corp., 667 Phil. 351, 363 (2011).

[66] Batas Pambansa Blg. 68, Sec. 36(1).

[67] Shipside Inc. v. Court of Appeals, 404 Phil. 981,994 (2001).

[68] Social Security System v. Commission on Audit, 433 Phil. 946, 955-956 (2002).

[69] Societe Des Produits, Nestle, S.A. v. Puregold Price Club, Inc., 817 Phil. 1030, 1042 (2017).

[70] Philippine Corporate Law, Cesar L. Villanueva, p. 230 (2013).

[71] Ching, et al. v. Subic Bay Golf and Country Club, Inc., et al., 742 Phil. 606, 620-621 (2014).

[72] Cua, Jr., et al. v. Tan, et al., 622 Phil. 661, 714 (2009).

[73] 485 Phil. 644 (2004).

[74] *Id.* at 655.

[75] Villamor, Jr. v. Umale, 744 Phil. 31,47 (2014).

[76] Asset Privatization Trust v. Court of Appeals, 360 Phil. 768, 805 (1998), citing Commercial Law of the Philippines, Aguedo F. Agbayani, Vol. III, p. 566, citing Ballantine, pp. 366-367.

[77] *Id.*

[78] Florete, et al. v. Florete, et al., 778 Phil. 614, 636 (2016).

[79] *Supra*.

[80] *Id.* at 715-716.

[81] Rollo (G.R. No. 210906), pp. 72-73.

[82] *Id.* at 26.

[83] Rep. of the Phils. v. Coalbrine Int'l. Phils., Inc., et al., 631 Phil. 487, 495 (2010).

[84] *Id.*

[85] *Id.*

[86] Everett v. Asia Banking Corporation, 49 Phil. 512, 527 (1926).

[87] Rollo (G.R. No. 210906), p. 30.

[88] Florete, et al. v. Florete, et al., *supra* note 78, at 635.

[89] Ching, et al. v. Subic Bay Golf and Country Club, Inc., et al., *supra* note 71, at 621.

[90] 608 Phil. 350 (2009).

[91] 406 Phil. 663 (2001).

[92] 257 Phil. 459 (1989).

[93] Ching, et al. v. Subic Bay Golf and Country Club, Inc., et al., *supra* note 71.

[94] A.M. No. 01-2-04-SC, March 13, 2001.

[95] Yu, et al. v. Yukayguan, et al., 607 Phil. 581, 612 (2009).

[96] *Id.*

[97] Rollo (G.R. No. 210906), p. 32.

[98] *Id.* at 253.

[99] *Supra* note 95.

[100] *Id.*

[101] Sec. 24. Election of directors or trustees. - x x x. In stock corporations, every stockholder entitled to vote shall have the right to vote in person or by proxy the number of shares of stock standing, at the time fixed in the by-laws, in his own name on the stock books of the corporation, or where the by-laws are silent, at the time of the election; and said stockholder may vote such number of shares for as many persons as there are directors to be elected or he may cumulate said shares and give one candidate as many votes as the number of directors to be elected multiplied by the number of his shares shall equal, or he may distribute them on the same principle among as many candidates as he shall see fit: Provided, That the total number of votes cast by him shall not exceed the number of shares owned by him as shown in the books of the corporation multiplied by the whole number of directors to be elected x x x.

[102] 668 Phil. 1 (2011) cited in Roy v. Chairperson Herbosa, et al., 800 Phil. 459 (2016).

[103] *Id.* at 53.

[104] Chua v. Court of Appeals, *supra* note 73, at 655.

[105] See: Batas Pambansa Blg. 68, Sec. 23.

[106] Tirazona v. Philippine Eds Techno-Service Inc. (PETInc.) and/or Kubota, et al., 596 Phil. 683, 692 (2009); and Brito, Sr. v. Dianala, et al., 653 Phil. 200,210 (2010).

[107] Rollo (G.R. No. 210906), p. 163.

[108] *Id.* at 183.

[109] Angeles v. Santos, 64 Phil. 697, 707 (1937).

[110] Rollo (G.R. No. 210906), p. 75.

[111] *Id.* at 253.

[112] See: Batas Pambansa Blg. 68, Sec. 24.

[113] Philippine Corporate Law, Cesar L. Villanueva, p. 23 (2013).

[114] Recently, Republic Act No. 11232 revised the Corporation Code, removing minimum number of incorporators required to form a corporation.

[115] Situs Dev't. Corp., et al. v. Asiatrust Bank, et al., 691 Phil. 707, 722 (2012).

[116] Pacaña-Contreras, et al. v. Rovila Water Supply, Inc., et al., 722 Phil. 460, 470 (2013).

[117] Sec. 25. Corporate officers, quorum. - x x x.

> The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and the by-laws of the corporation. Unless the articles of incorporation or the by-laws provide for a greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is a quorum shall be valid as a corporate act, except for the election of officers which shall require the vote of a majority of all the members of the board.

[118] Sec. 97. Articles of incorporation. - x x x.

> The articles of incorporation of a close corporation may provide that the business of the corporation shall be managed by the stockholders of the corporation rather than by a board of directors. So long as this provision continues in effect:
>
> x x x x
>
> 2. Unless the context clearly requires otherwise, the stockholders of the corporation shall be deemed to be directors for the purpose of applying the provisions of this Code[.]

[119] Rollo (G.R. No. 211203), pp. 266-273.

[120] 711 Phil. 680 (2013).

[121] *Id.* at 692-693.

[122] Rollo (G.R. No. 210906), p. 33.

[123] *Id.* at 32-35.

[124] Sec. 25. Corporate officers, quorum. - Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the by-laws. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time. x x x x (Emphasis supplied)

[125] Rollo (G.R. No. 211203), p. 62.

[126] *Id.*

[127] Heirs of Yasoña v. De Ramos, 483 Phil. 162, 168 (2004).

[128] Bayani v. Panay Electric Co., Inc., 386 Phil. 980, 986 (2000).

[129] *Id.* at 987.

[130] Peralta v. Raval, 808 Phil. 115, 136 (2017).

[131] "J" Marketing Corp. v. Sia, Jr., 349 Phil. 513, 517 (1998).

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REPUBLIC OF THE PHILIPPINES
Supreme Court
Manila

FIRST DIVISION

[G.R. No. 218738. March 09, 2022]

METROPOLITAN BANK & TRUST COMPANY (METROBANK), PETITIONER, VS. SALAZAR REALTY CORPORATION* REPRESENTED BY INCORPORATORS/ STOCKHOLDERS RAMON ANG SALAZAR, JR., ROBERT ANG SALAZAR, ROGER ANG SALAZAR, AND ROSEMARIE SALAZAR FERNANDEZ, RESPONDENTS.**

D E C I S I O N

GAERLAN, *J.:*

The present petition for review on *certiorari*[1] assails the Decision[2] and the Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 05050, which dismissed Metropolitan Bank & Trust Company's (Metrobank) petition for *certiorari* against the June 16, 2009[4] and February 23, 2010[5] Orders issued by Branch 9 of the Regional Trial Court (RTC) of Tacloban City, in Civil Case No. 2001-11-164.

Antecedents

Petitioner Metrobank and respondent Salazar Realty Corporation (SARC) are both Philippine corporations. Metrobank is engaged in the banking business,[6] while SARC is engaged in the real estate business.[7] Also involved in the events preceding the present litigation is another Philippine corporation, Tacloban RAS Construction Corporation (Tacloban RAS).

On November 5, 2001, SARC filed an action for quieting of title and nullification of contracts against Metrobank before the RTC of Tacloban City.[8] The petition was docketed as Civil Case No. 2001-11-164.[9] SARC alleged that:

1) Based on its latest filings at the time of the filing of the petition, SARC had the following officers, who also composed its board of directors:[10] Raymund A. Salazar, President; Ramon Ve. Salazar, Vice President; Ralph A. Salazar,[11] Secretary; Rosemarie A. Salazar, Treasurer; Consuelo A. Salazar,[12] Member, Board of Directors.

2) On October 6, 1992, Tacloban RAS obtained a loan from Metrobank in the amount of ten million pesos (P10,000,000.00).[13] On January 9, 1996, the loan amount was increased to twelve million pesos (P12,000,000.00); and on October 6, 1999 it was further increased to eighteen million five hundred thousand pesos (P18,500,000.00).[14] This final amount was reflected in a promissory note executed on October 6, 1999 between Tacloban RAS and Metrobank, which was signed by Consuelo and Ralph as president and corporate secretary, respectively, of Tacloban RAS.[15] To secure the loan, Metrobank and SARC entered into a mortgage contract on January 9, 1996, with Consuelo and Ralph still signing, this time on behalf of SARC.[16] The mortgage covered five parcels of land located in Tacloban City, which were all registered in the name of SARC.[17] The mortgage was likewise amended to cover the final amount of the loan.[18]

3) Meanwhile, on March 30, 1995, Ramon Ve. Salazar, SARC's Vice President and director, passed away. Consuelo likewise passed away on October 21, 2001. The vacancies left by their passing were left unfilled.[19]

4) The remaining directors of SARC, including Ralph, issued a board resolution approving the mortgage of the five SARC-owned lots to secure the loan obligation of Tacloban RAS.[20]

5) Tacloban RAS defaulted on the loan, prompting Metrobank to initiate extrajudicial foreclosure proceedings before the RTC of Tacloban City.[21] Metrobank emerged as the winning bidder in the auction sale.[22] Upon issuance of the certificate of sale[23] and filing of the affidavit of consolidation of ownership,[24] SARC's certificates of title were cancelled and new ones were issued in Metrobank's favor.[25]

6) Upon hearing about the auction sale, Ramon Ang Salazar, Jr., Robert Ang Salazar, Roger Ang Salazar and Rosemarie Salazar Fernandez (hereinafter referred to as Ramon et al.) as incorporators and stockholders acting in behalf of SARC, immediately checked the status of the disputed lands with the Register of Deeds. They discovered that SARC's certificates of title had been cancelled.[26] In response, Ramon et al. registered an adverse claim on the new certificates of title that were issued to Metrobank.[27]

7) In view of the SARC board's inaction and tacit approval of the unauthorized encumbrance and subsequent loss of the corporation's real properties, Ramon et al. filed the present suit on SARC's behalf.

8) The loan agreement is void because Consuelo is not a stockholder or officer of Tacloban RAS, based on its incorporation papers filed with the SEC.[28]

9) The mortgage agreement and the foreclosure proceedings are void because Tacloban RAS has no authority to use SARC's properties as collateral. Rather, the authorization for such purpose was issued by the SARC board to a single proprietorship named RAS Construction, which is an entity distinct and separate from Tacloban RAS.[29]

10) SARC exceeded its corporate powers when it entered into a mortgage contract to secure the obligation of a separate, distinct, and unrelated corporation. Tacloban RAS is not a subsidiary of SARC. It likewise holds no shares or any other form of investment in the latter corporation. Thus, the mortgage contract is void for being ultra vires insofar as SARC is concerned.[30]

11) SARC's principal corporate assets are limited to six (6) parcels of land. Consequently, the mortgage of the five parcels in dispute, including the lot on which SARC's principal office is located, constitutes an encumbrance of substantially all the assets of the corporation which must be authorized by SARC's stockholders in a meeting for that purpose, pursuant to Section 40 of the Corporation Code. Absent such authorization, the mortgage contract is null and void.[31]

12) SARC board and stockholder approvals for the mortgage contract and the amendments thereto were not annotated on SARC's certificates of title, giving rise to the presumption that neither the SARC board nor its stockholders approved said contract and the amendments thereto.[32]

13) Metrobank failed to exercise due diligence when it extended an eighteen-million-peso loan to Tacloban RAS, whose authorized capital stock was only three million pesos. Furthermore, the loan was secured by properties owned by SARC, whose authorized capital stock was only five million pesos. More importantly, Metrobank was guilty of negligence when it failed to thoroughly investigate Consuelo and Ralph's authority to enter contracts and encumber properties on behalf of Tacloban RAS and SARC.[33]

14) Assuming that the loan and mortgage contracts are valid and binding, the foreclosure proceedings are nevertheless null and void, for the following reasons: a) Metrobank's petition for foreclosure lacks several material details which render it fatally defective under A.M. No. 99-10-05-0;[34] b) SARC was not given personal notice of the foreclosure sale; c) the publication of the notice of sale was defective because copies thereof were attached to the record only after the auction sale had taken place, and notices of publication were not furnished for all instances of publication, in violation of A.M. No. 99-10-05-0; d) there was only one bidder in the auction sale, in violation of item 5 of A.M. No. 99-10-05-0; and e) Section 47 of Republic Act No. 8791 which sets different redemption periods for natural and juridical persons is unconstitutional.[35]

Accordingly, SARC prayed that the cloud on its title be removed by: 1) nullifying the loan and mortgage agreements between Metrobank and Tacloban RAS/SARC; 2) nullifying the foreclosure proceedings initiated by Metrobank; and 3) cancelling the certificates of title issued to Metrobank.[36]

SARC's petition was raffled to Branch 9 of the Tacloban City RTC, which assumed jurisdiction over the case.

On February 13, 2002, Metrobank filed a Comment with Motion to Dismiss. It argued that Ralph had authority to enter into the loan and mortgage agreements, and that the mortgaged properties were personally owned by Ralph and Consuelo.[37] Metrobank further alleged that Consuelo personally bound herself as surety;[38] and that the final amount of the loan was agreed upon pursuant to a restructuring upon Ralph's request, with the approval of the boards of directors of both Tacloban RAS and SARC.[39]

Metrobank also argued that SARC and its stockholders have no standing to seek the cancellation of the loan and mortgage agreements since SARC is not a party thereto.[40] It also argued that the petition filed by SARC through Ramon et al. is in the nature of a derivative suit which must be directed against SARC's officers, directors, or stockholders. Likewise, since the petition is in the nature of a derivative suit, it is an intra-corporate controversy over

which regular courts like Branch 9 of the Tacloban City RTC have no jurisdiction.[41] Metrobank thus prayed that the petition be dismissed for lack of standing on the part of both Ramon et al. and SARC, and for lack of jurisdiction.

In its Reply, SARC reiterated Ralph's lack of authority to bind Tacloban RAS and SARC. It also disputed Metrobank's argument on standing, maintaining that the case was properly filed against Metrobank, who was responsible for clouding its titles by initiating the foreclosure proceedings.[42] In the same vein, SARC also rejected Metrobank's characterization of the petition as an intra-corporate controversy, arguing that the loan and mortgage contracts, as well as the foreclosure proceedings, are clouds on SARC's title which may only be removed by the RTC, thus:[43]

> 12.3 x x x [W]hat [SARC] is claiming is that [Metrobank] violated the right of ownership of the [SARC] over the lands which are the subject matter of this suit by having the same sold at foreclosure proceedings and having the titles of [SARC] corporation cancelled and transferred in [Metrobank]'s name when it did not have the right to do the same because [SARC] did not consent to the Mortgage Contract under which [Metrobank] is claiming rights and such Mortgage is not supported by a valid principal obligation as the loan was not consented to by [Tacloban RAS] based on the petition filed by [Metrobank] for the extrajudicial foreclosure of the Mortgage allegedly executed by Petitioner Salazar Ang Realty Corporation.
>
> 12.4 The relief sought which is the declaration of nullity of the mortgage contract and foreclosure proceedings is demandable only from the [Metrobank] as the holder of rights under the contract as Mortgagee and the public officials responsible for performing duties under Act 3135 and not from Ralph Salazar who is not a party to the contract in question - the parties involved being Salazar Ang Realty Corporation as the alleged Mortgagor and [Metrobank] as the Mortgagee.[44]

On April 25, 2002, the trial court denied Metrobank's motion to dismiss, and ordered SARC to file an answer or other responsive pleading.[45] Thereafter, the parties filed their respective pre-trial briefs. On March 11, 2003, Metrobank filed a motion for inhibition,[46] which was denied.[47] On November 6, 2005, the trial court granted SARC's request for preliminary injunction to prevent Metrobank from further enforcing its claim to the properties.[48] On February 1, 2005, Metrobank filed a Motion for Leave to File an Amended Answer with Motion to Dismiss, which was denied in an Order dated December 6, 2005.[49]

On February 2, 2009, Metrobank filed yet another motion to dismiss,[50] reiterating its argument that SARC's petition is a derivative suit and therefore an intra-corporate controversy. Under A.M. No. 00-11-03-SC, a special commercial court was created in the Tacloban City RTC; however, Branch 9, which is a regular trial court, continued to exercise jurisdiction over the present case even if it has no jurisdiction thereover other than to dismiss it.[51] SARC filed an opposition to Metrobank' s motion to dismiss,[52] reiterating its stance that the case falls within the jurisdiction of the regular courts regardless of its nature as a derivative suit because the reliefs sought are within the jurisdiction of the regular courts.[53]

On June 16, 2009, the trial court issued the first assailed order denying Metrobank's latest motion to dismiss. The trial court ruled that the requirement that cases formerly cognizable by the SEC be filed with a special commercial court does not apply to the present case, which was filed before A.M. No. 03-03-03-SC took effect on July 1, 2003. Assuming that the requirement is applicable, the trial court ruled that it retains the jurisdiction to transfer the case to the special commercial court in the Tacloban City RTC, on the ground that jurisdiction, once acquired, continues until final resolution of the case.[54] The trial court further ruled that the present case does not involve an intra-corporate controversy, because it does not involve a dispute between a corporation and its stockholders; rather, it involves a suit by a corporation through its shareholders against another corporation and certain public officers. Furthermore, as SARC correctly points out, its causes of action are within the jurisdiction of the regular courts.[55]

On February 23, 2010, the trial court rendered the second assailed order[56] denying Metrobank's motion for reconsideration.[57]

Still adamant that the case involves an intra-corporate controversy, Metrobank elevated the matter to the CA, arguing that the trial court committed grave abuse of discretion in narrowly defining intra-corporate controversies as limited to suits involving disputes between a corporation and its stockholders.[58]

In dismissing Metrobank's petition, the CA ruled that under Rule 1 of A.M. No. 01-2-04-SC, or the Interim Rules of Procedure Governing Intra-Corporate Controversies (2001 IRPIC), derivative suits are also intra-corporate controversies. Therefore, to determine if SARC's petition must be tried under the 2001 IRPIC by a special commercial court, it must pass the two-tier intra-corporate controversy test. The appellate court found that SARC's petition does not pass the two-tier test. It satisfies neither the relationship test, since it does not involve any of the intra-corporate relationships enumerated in Section 5(b) of Presidential Decree No. 902-A;[59] nor the controversy test, since it does not involve a dispute which is intrinsically connected with the regulation of SARC or a dispute which arises out of intra-corporate relations within SARC.[60] Rather, the case involves the removal of the cloud on

SARC's titles, which was created by the contracts executed by Ralph and Consuelo allegedly on behalf of Tacloban RAS and SARC.[61] Furthermore, Ramon et al. are not stockholders of the corporation they are suing; rather, they are suing on behalf of the corporation in which they hold shares.[62] Citing jurisprudence, the CA held that **"Where the complaint is for annulment of mortgage with the mortgagee bank as one of the defendants, the jurisdiction over said complaint is lodged with the regular courts because the mortgagee bank has no intra-corporate relationship with the stockholders;"**[63] and that "the question as to who is the true owner of the disputed property is civil in nature and should be threshed out by a regular court," not by a special commercial court.[64]

The CA denied Metrobank's motion for consideration[65] through the assailed resolution; hence, this petition, which raises the following errors:

> 1). THE COURT OF APPEALS SERIOUSLY ERRED IN USING THE TWO TIER TEST AS A GAUGE IN DETERMINING WHETHER OR NOT A SUIT IS A DERIVATIVE SUIT. ITS CONSEQUENT EMPLOYMENT OF SUCH TEST IS WITHOUT BASIS AND VIOLATES SETTLED JURISPRUDENCE, SUCH AS, THE CASE OF FILIPINAS PORT SERVICES INC V. GO AND HI-YIELD REALTY V. COURT OF APPEALS AND THE INTERIM RULES OF PROCEDURE GOVERNING INTRACO[R]PORATE CASES.
>
> 2). THE REGIONAL TRIAL COURT, BRANCH [9] TACLOBAN CITY, WHICH IS AN ORDINARY COURT AND NOT A COMMERCIAL COURT, DOES NOT HAVE JURISDICTION OVER A DERIVATIVE SUIT.
>
> 3). THE FINDING OF THE COURT OF APPEALS THAT THE CASE A QUO IS NOT A DERIVATIVE SUIT BECAUSE THE STOCKHOLDERS WHO BROUGHT THE SUIT FOR OR ON BEHALF OF RESPONDENT CORPORATION ARE NOT STOCKHOLDERS OF PETITIONER, ASSUMING EX ARGUMENTI, IS CORRECT WILL CAUSE THE DISMISSAL OF THE CASE A QUO ON THE GROUND OF LACK OF CAUSE OF ACTION OR PERSONALITY TO SUE.[66]

The essential issue raised by the petition is whether Branch 9 of the Tacloban City RTC, not being a special commercial court, has jurisdiction over a derivative suit to annul a mortgage allegedly entered into by corporate officers without proper authorization and where the defendants are third parties with no relation to the suing corporation.

The Court's Ruling

I.

Metrobank argues that jurisdiction over derivative suits is vested in the special commercial courts. It asserts that the CA erred in applying the two-tier test to determine whether the case should be tried by a special commercial court. The two-tier test applies only to the determination of the existence of an intra-corporate controversy, and not to the determination of whether an action is a derivative suit, which is determined using a different three-part test.

The special commercial courts were organized pursuant to the provisions of the Securities Regulation Code (SRC).[67] Sections 4.1 and 5.2 thereof provide:

> Section 4. Administrative Agency. - 4.1. This Code shall be administered by the Securities and Exchange Commission (hereinafter referred to as the "Commission") as a Collegial body, composed of a chairperson and (4) Commissioners, appointed by the President for a term of (7) seven years each and who shall serve as such until their successor shall have been appointed and qualified. A Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his/her predecessor was appointed, shall serve only for the unexpired portion of their terms under Presidential Decree No. 902-A. Unless the context indicates otherwise, the term "Commissioner" includes the Chairperson.
>
> 5.2. **The Commission's jurisdiction over all cases enumerated under section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: Provided, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over the cases.** The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payment/rehabilitation cases filed as of 30 June 2000 until finally disposed. (Underscoring and emphasis supplied)

In turn, Section 5 of Presidential Decree No. 902-A, or the SEC Reorganization Decree, defines certain classes of disputes and the tribunal with jurisdiction over them. Over time, these classes of disputes have become known as intra-corporate disputes or intra-corporate controversies.[68]

Pursuant to the transfer of jurisdiction effected therein, Section 5.2 of the SRC also authorized the Supreme Court to designate certain RTCs to try intra-corporate disputes. Thus, the Supreme Court designated certain RTCs as special commercial courts[69] and enacted the 2001 IRPIC to provide for the procedure to be observed in trying the above-enumerated cases.[70] Interestingly, Rule 1, Section 1(a) of the 2001 IRPIC also enumerates the cases to which it shall be applicable. At this point, we compare this provision with Section 5 of the SEC Reorganization Decree, which remains the source provision for the subject matter jurisdiction of the special commercial courts:

Section 5, SEC Reorganization Decree	**Rule 1, Section 1(a), 2001 IRPIC**
SECTION 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have **original and exclusive jurisdiction to hear and decide cases involving:**	SECTION 1. (a) Cases Covered — These Rules shall govern the procedure to be observed in civil cases involving the following:
a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission;	(1) Devices or schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association;
b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity;	(2) Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members, or associates; and between, any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively;
c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.	(3) Controversies in the election or appointment of directors, trustees, officers, or managers of corporations, partnerships, or associations;
	(4) Derivative suits; and
	(5) Inspection of corporate books.

Conspicuous here is the fact that the first three items of both enumerations are essentially the same, for the obvious reason that the 2001 IRPIC was intended to serve as the procedural regime for the cases defined in Section 5 of the SEC Reorganization Decree, jurisdiction over which has been transferred to the RTCs. The confusion which arose in the present case is engendered partly by the addition of derivative suits as a separate item in the 2001 IRPIC.

II.

A derivative suit is one of three kinds of suits that may be filed by a stockholder or member of a corporation or association, *viz.*:

> Suits by stockholders or members of a corporation based on wrongful or fraudulent acts of directors or other persons may be classified into individual suits, class suits, and derivative suits. Where a stockholder or member is denied the right of inspection, his suit would be individual because the wrong is done to him personally and not to the other stockholders or the corporation. Where the wrong is done to a group of stockholders, as where preferred stockholders' rights are violated, a class or representative suit will be proper for the protection of all stockholders belonging to the same group. But where the acts complained of constitute a wrong to the corporation itself, then the cause of action belongs to the corporation and not to the individual stockholder or member. Although in most every case of wrong to the corporation, each stockholder is necessarily affected because the value of his interest therein would he impaired, this fact of itself is not sufficient to give him an individual cause of

> action since the corporation is a person distinct and separate from him, and can and should itself sue the wrongdoers. Otherwise, not only would the theory of separate entity be violated, but there would be multiplicity of suits as well as a violation of the priority rights of creditors. Furthermore, there is the difficulty of determining the amount of damages that should be paid to each individual stockholder.
>
> However, **in cases of mismanagement where the wrongful acts committed by the directors or trustees themselves, a stockholder or member may find that he has no redress because the former are vested by law with the right to decide whether or not the corporation should sue, and they will never be willing to sue themselves. The corporation would thus be helpless to seek remedy. Because of the frequent occurrence of such a situation, the common law gradually recognized the right of a stockholder to sue on behalf of the corporation in what eventually became known as a "derivative suit." It has been proven to be an effective remedy of the minority against abuses of management. Thus, an individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stock in order to protect or vindicate corporate rights, whenever officials of the corporation refuse to sue or are the ones to be sued or hold the control of the corporation.** In such actions, the suing stockholder is regarded as the nominal party, with the corporation as the party in interest.[71]

In Ago Realty & Development Corp. v. Ago,[72] we further elaborated on this basic principle that derivative suits are equitable exception to the rule that a corporation's power to bring suits may only be exercised through its board of directors:

> While corporations are subjected to the State's broad regulatory powers, it is their directors and officers who are tasked with addressing questions of internal policy and management. The business of a corporation is conducted by its board of directors, and so long as the board acts in good faith, the State, through the courts, may not interfere with its management decisions. This finds support in Section 23 of the Corporation Code, which provides that a corporation exercises its powers, conducts its business, and controls and holds its property through its board of directors.
>
> As creatures of the law, corporations only possess those powers that are granted through statute, either expressly or by way of implication, or those that are incidental to their existence.
>
> One of the powers expressly granted by law to corporations is the power to sue. As with other corporate powers, the power to sue is lodged in the board of directors, acting as a collegial body. Thus, in the absence of any clear authority from the board, charter, or by-laws, no suit may be maintained on behalf of the corporation. A case instituted by a corporation without authority from its board of directors is subject to dismissal on the ground of failure to state a cause of action.
>
> *In certain instances, however, the stockholders may sue on behalf of the corporation*
>
> As an exception to the foregoing rule, jurisprudence has recognized certain instances when minority stockholders may bring suits on behalf of corporations. Where the board of directors itself is a party to the wrong, either because it is the author thereof or because it refuses to take remedial action, equity permits individual stockholders to seek redress. These actions have come to be known as derivative suits. In Chua v. Court of Appeals, the Court defined a derivative suit as "a suit by a shareholder to enforce a corporate cause of action."
>
> In derivative suits, it is the corporation that is the victim of the wrong. As such, it is the corporation that is properly regarded as the real party in interest, while the relator-stockholder is merely a nominal party. The corporation must be impleaded so that the benefits of the suit accrue to it and also because it must be barred from bringing a subsequent case against the same defendants for the same cause of action. Stated otherwise, the judgment rendered in the suit must constitute *res judicata* against the corporation, even though it refuses to sue through its board of directors.
>
> x x x x
>
> The right of stockholders to bring derivative suits is not based on any provision of the Corporation Code or the Securities Regulation Code, but is a right that is implied by the fiduciary duties that directors owe corporations and stockholders. Derivative suits are, therefore, grounded not on law, but on equity.[73]

Jurisprudence has developed three requisites for a derivative suit, which are first enumerated together in the 1989 case of San Miguel Corporation v. Kahn:[74]

> The requisites for a derivative suit are as follows:

> a) the party bringing suit should be a shareholder as of the time of the act or transaction complained of, the number of his shares not being material;
>
> b) he has tried to exhaust intra-corporate remedies, *i.e.*, has made a demand on the board of directors for the appropriate relief but the latter has failed or refused to heed his plea;
>
> c) the cause of action actually devolves on the corporation, the wrongdoing or harm having been, or being caused to the corporation and not to the particular stockholder bringing the suit.[75]

This is the three-part test insisted upon by Metrobank; however, this test has been superseded by Rule 8, Section 1 of the 2001 IRPIC, which obliquely defines a derivative suit, or a derivative action, as an action brought by a stockholder or member in the name of a corporation or association.[76] That same provision states that such actions may be brought, provided that the following requisites, which must be specifically alleged in the complaint,[77] are met:

> (1) The party suing on the corporation or association's behalf was a stockholder or member at the time the acts or transactions subject of the action occurred and at the time the action was filed;
>
> (2) Such party exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires;
>
> (3) No appraisal rights are available for the act or acts complained of; and
>
> (4) The suit is not a nuisance or harassment suit.
>
> (5) The suit must be brought in the name of the corporation.[78]

III.

Prior to the enactment of the SEC Reorganization Decree in 1976, jurisdiction over derivative suits was lodged with the courts of general jurisdiction.[79]

With the advent of the SEC Reorganization Decree, jurisprudence has resorted to Section 5 thereof to allocate jurisdiction between the SEC and the regular courts. The application of Section 5 was eventually standardized into a two-tier test which has been applied to all kinds of stockholder suits, whether individual, class, or derivative.[80] The two "tiers" are actually two separate tests: the first test assesses the relationship of the parties of the case to one another,[81] and the second test assesses nature of the controversy among the parties:[82]

> To determine whether a case involves an intra-corporate controversy, x x x two elements must concur: (a) the status or relationship of the parties; and (2) the nature of the question that is the subject of their controversy.
>
> The first element requires that the controversy must arise out of intra-corporate or partnership relations between any or all of the parties and the corporation, partnership or association of which they are stockholders, members or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the State insofar as it concerns their individual franchises. The second element requires that the dispute among the parties be intrinsically connected with the regulation of the corporation. If the nature of the controversy involves matters that are purely civil in character, necessarily, the case does not involve an intra-corporate controversy.[83]

The two-tier test ensures that cases involving corporations but do not involve actual intra-corporate disputes are filtered out:

> [I]n the 1984 case of DMRC Enterprises v. Este del Sol Mountain Reserve, Inc., the Court introduced the nature of the controversy test. We declared in this case that it is not the mere existence of an intra-corporate relationship that gives rise to an intra-corporate controversy; to rely on the relationship test alone will divest the regular courts of their jurisdiction for the sole reason that the dispute involves a corporation, its directors, officers, or stockholders. We saw that there is no legal sense in disregarding or minimizing the value of the nature of the transactions which gives rise to the dispute.
>
> Under the nature of the controversy test, the incidents of that relationship must also be considered for the purpose of ascertaining whether the controversy itself is intra-corporate. The controversy must not only be rooted in the existence of an intra-corporate relationship, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation. If the relationship and its incidents are

merely incidental to the controversy or if there will still be conflict even if the relationship does not exist, then no intra-corporate controversy exists.[84]

Subsequent decisions further hold that the following relationships are considered intra-corporate: (1) those between the corporation, partnership or association and the public; (2) those between the corporation, partnership or association and the State insofar as its franchise, permit or license to operate is concerned; (3) those between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) those among the stockholders, partners or associates themselves.[85] Likewise, a controversy is intra-corporate in nature if it involves the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation.[86]

Thus, under the regime of the SEC Reorganization Decree, it appears that derivative suits which satisfy the two-tier test must be tried by the SEC, while those that do not must be tried by the regular courts.[87] This view is manifested in the 2012 case of Lisam Enterprises v. Banco de Oro Unibank (Lisam),[88] which, like the present case, also involved a derivative suit for annulment of mortgage filed by a shareholder against the president and the treasurer of the corporation, as well as the mortgagee bank. The bank filed a motion to dismiss, claiming the stockholder's lack of legal capacity to sue, failure to state a cause of action, and *litis pendentia*. The trial court granted the motion to dismiss and denied the stockholder's motion to amend the complaint to include an allegation that she tried to exhaust intra-corporate remedies. We allowed the stockholder to resort directly to the Supreme Court to resolve pure questions of law, and reversed the trial court, *viz*.:

> With the amendment stating "that plaintiff Lolita A. Soriano likewise made demands upon the Board of Directors of Lisam Enterprises, Inc., to make legal steps to protect the interest of the corporation from said fraudulent transaction, but unfortunately, until now, no such legal step was ever taken by the Board, hence, this action for the benefit and in behalf of the corporation," does the amended complaint now sufficiently state a cause of action? In Hi-Yield Realty, Incorporated v. Court of Appeals, the Court enumerated the requisites for filing a derivative suit, as follows:
>
> a) the party bringing the suit should be a shareholder as of the time of the act or transaction complained of, the number of his shares not being material;
>
> b) he has tried to exhaust intra-corporate remedies, *i.e.*, has made a demand on the board of directors for the appropriate relief but the latter has failed or refused to heed his plea; and
>
> c) the cause of action actually devolves on the corporation, the wrongdoing or harm having been, or being caused to the corporation and not to the particular stockholder bringing the suit.
>
> A reading of the amended complaint will reveal that all the foregoing requisites had been alleged therein. Hence, the amended complaint remedied the defect in the original complaint and now sufficiently states a cause of action.
>
> Respondent PCIB should not complain that admitting the amended complaint after they pointed out a defect in the original complaint would be unfair to them. They should have been well aware that due to the changes made by the 1997 Rules of Civil Procedure, amendments may now substantially alter the cause of action or defense. It should not have been a surprise to them that petitioners would redress the defect in the original complaint by substantially amending the same, which course of action is now allowed under the new rules.
>
> The next question then is, upon admission of the amended complaint, would it still be proper for the trial court to dismiss the complaint? The Court answers in the negative.
>
> Saura v. Saura, Jr. is closely analogous to the present case. In Saura, the petitioners therein, stockholders of a corporation, sold a disputed real property owned by the corporation, despite the existence of a case in the Securities and Exchange Commission (SEC) between stockholders for annulment of subscription, recovery of corporate assets and funds, etc. The sale was done without the knowledge of the other stockholders, thus, said stockholders filed a separate case for annulment of sale, declaration of nullity of deed of exchange, recovery of possession, etc., against the stockholders who took part in the sale, and the buyer of the property, filing said case with the regular court (RTC). Petitioners therein also filed a motion to dismiss the complaint for annulment of sale filed with the RTC, on the ground of forum shopping, lack of jurisdiction, lack of cause of action, and *litis pendentia* among others. The Court held that the complaint for annulment of sale was properly filed with the regular court, because the buyer of the property had no intra-corporate relationship with the stockholders, hence, the buyer could not be joined as party-defendant in the SEC case. To include said buyer as a party-defendant in the case pending with the SEC would violate the then existing rule on jurisdiction over intra-corporate disputes. The Court also struck down the argument that there was forum shopping, ruling that the issue of recovery of corporate assets and funds pending with the SEC is a totally different issue from the issue of the validity of the sale, so a decision in the SEC case would not

> amount to *res judicata* in the case before the regular court. Thus, the Court merely ordered the suspension of the proceedings before the RTC until the final outcome of the SEC case.
>
> The foregoing pronouncements of the Court are exactly in point with the issues in the present case. Here, the complaint is for annulment of mortgage with the mortgagee bank as one of the defendants, thus, as held in Saura, jurisdiction over said complaint is lodged with the regular courts because the mortgagee bank has no intra-corporate relationship with the stockholders. There can also be no forum shopping, because there is no identity of issues. The issue being threshed out in the SEC case is the due execution, authenticity or validity of board resolutions and other documents used to facilitate the execution of the mortgage, while the issue in the case filed by petitioners with the RTC is the validity of the mortgage itself executed between the bank and the corporation, purportedly represented by the spouses Leandro and Lilian Soriano, the President and Treasurer of petitioner LEI, respectively. Thus, there is no reason to dismiss the complaint in this case.[89]

Obviously, Lisam relies heavily on the earlier ruling in Saura v. Saura, Jr. (Saura),[90] which was decided prior to the transfer of jurisdiction over intra-corporate controversies from the SEC to the courts. One of the reasons put forth by the Saura court in making a distinction between derivative suits cognizable by the SEC and derivative suits cognizable by the regular courts is that the SEC is a specialized administrative agency which has jurisdiction over intra-corporate disputes but not over actions to annul mortgages or sales:

"It is true that the trend is towards vesting administrative bodies like the SEC with the power to adjudicate matters coming under their particular specialization, to insure a more knowledgeable solution of the problems submitted to them. This would also relieve the regular courts of a substantial number of cases that would otherwise swell their already clogged dockets. But as expedient as this policy may be, it should not deprive the courts of justice of their power to decide ordinary cases in accordance with the general laws that do not require any particular expertise or training to interpret and apply. Otherwise, the creeping take-over by the administrative agencies of the judicial power vested in the courts would render the judiciary virtually impotent in the discharge of the duties assigned to it by the Constitution."

Since Sandalwood has no intra-corporate relationship with the respondents, it cannot be joined as party-defendant in the SEC case as to do so would violate the rule on jurisdiction. Therefore, respondents' complaint against Sandalwood for the annulment of the sale of realty was properly filed before the regular court. This action must await the final ruling of the issue raised in SEC Case No. 2968, questioning the validity of the deed of exchange, the resolution of which is a logical antecedent of the issue involved in the civil action against Sandalwood. Thus, respondents' complaint for annulment of sale can only succeed if final judgment is rendered in SEC Case No. 2968, annulling the deed of exchange executed in favor of VGFI.[91]

IV.

Upon the transfer of the SEC's jurisdiction over intra-corporate disputes pursuant to Section 5.2 of the SRC and the 2001 IRPIC, the distinction between "intra-corporate" and "non-intra-corporate" derivative suits was obliterated; and jurisdiction over all derivative suits was returned to the trial courts.

Relative thereto, we have already mentioned that the 2001 IRPIC was intended to serve as the procedural regime to govern the cases defined in Section 5 of the SEC Reorganization Decree, Thus, the express inclusion of derivative suits in the classes of cases governed by the 2001 IRPIC implies that all derivative suits must now be tried by the special commercial courts. This conclusion is further bolstered by an examination of the concept and nature of a derivative suit. Since a derivative suit is an equity-based procedural device which allows an unauthorized person to sue on behalf of a corporation in order to remedy official or directorial mismanagement, the very act of instituting a derivative suit implies the existence of an intra-corporate dispute, regardless of the relief sought by such suit or the parties impleaded therein. Couched in the language of Section 5(b) of the SEC Reorganization Decree, **the mere resort** to a derivative suit implies the existence of a "controvers[y] arising out of **intra-corporate** x x x **relations, between and among stockholders [or] members; between any or all of them and the corporation** x x x **or association of which they are stockholders [or] members."** In the case of a derivative suit, this would normally entail a dispute between an individual stockholder or a group of stockholders, against the directors, the officers, or the majority stockholders.

This view is based not only on the text of the statute but also on jurisprudence. In an obiter dictum in the 1997 case of Western Institute of Technology, Inc. v. Salas, the Court expressly acknowledged that a derivative suit is an intra-corporate dispute as defined in Section 5(b) of the SEC Reorganization Decree.[92] This obiter dictum became doctrine in Forest Hills Golf and Country Club, Inc. v. Fil-Estate Properties, Inc.,[93] where we rejected the suing shareholder's argument that the case, while admittedly a derivative suit, did not involve an intra-corporate dispute because he was suing the other shareholders not in their capacity as shareholders but as third-party developers of a property owned by the corporation, *viz*.:

> Petitioner FHGCCI's contention that the instant case does not involve an intra-corporate controversy as it was filed against respondents FEPI and FEGDI as developers, and not as shareholders of the

corporation holds no water. Apparent in the Complaint are allegations of the interlocking directorships of the Board of Directors of petitioner FHGCCI and respondents FEPI and FEGDI, the conflict of interest of the Board of Directors of petitioner FHGCCI, and their bad faith in carrying out their duties. Likewise alleged is that respondent FEPI and, later, respondent FEGDI are shareholders of petitioner FHGCCI which under the project agreement, respondent FEPI was tasked to perform the development and construction work and other obligations and undertakings of the project as full payment of its subscription to the authorized capital stock of petitioner FHGCCI, which it later assigned to respondent FEGDI. Considering these allegations, we find that, contrary to the claim of petitioner FHGCCI, there are unavoidably intra-corporate controversies intertwined in the specific performance case.

Moreover, a derivative suit is a remedy designed by equity as a principal defense of the minority shareholders against the abuses of the majority. Under the Corporation Code, the corporation's power to sue is lodged with its board of directors or trustees. However, when its officials refuse to sue, or are the ones to be sued, or hold control of the corporation, an individual stockholder may be permitted to institute a derivative suit to enforce a corporate cause of action on behalf of a corporation in order to protect or vindicate its rights. In such actions, the corporation is the real party in interest, while the stockholder suing on behalf of the corporation is only a nominal party. Considering its purpose, **a derivative suit, therefore, would necessarily touch upon the internal affairs of a corporation.** It is for this reason that a derivative suit is among the cases covered by the Interim Rules of Procedure Governing Intra-Corporate Controversies, A.M. No. 01-2-04-SC, March 13, 2001.[94]

V.

The cognizability of derivative suits by the special commercial courts is further bolstered by the 2015 case of Gonzales, et al. v. GJH Land, Inc., et al. (Gonzales),[95] where the Court En Banc laid down the following guidelines:

1. If a commercial case filed before the proper RTC is wrongly raffled to its regular branch, the proper courses of action are as follows:

1.1 If the RTC has only one branch designated as a Special Commercial Court, then the case shall be referred to the Executive Judge for re-docketing as a commercial case, and thereafter, assigned to the sole special branch;

1.2 If the RTC has multiple branches designated as Special Commercial Courts, then the case shall be referred to the Executive Judge for re-docketing as a commercial case, and thereafter, raffled off among those special branches; and

1.3 If the RTC has no internal branch designated as a Special Commercial Court, then the case shall be referred to the nearest RTC with a designated Special Commercial Court branch within the judicial region. Upon referral, the RTC to which the case was referred to should re-docket the case as a commercial case, and then: (a) if the said RTC has only one branch designated as a Special Commercial Court, assign the case to the sole special branch; or (b) if the said RTC has multiple branches designated as Special Commercial Courts, raffle off the case among those special branches.

2. If an ordinary civil case filed before the proper RTC is wrongly raffled to its branch designated as a Special Commercial Court, then the case shall be referred to the Executive Judge for re-docketing as an ordinary civil case. Thereafter, it shall be raffled off to all courts of the same RTC (including its designated special branches which, by statute, are equally capable of exercising general jurisdiction same as regular branches), as provided for under existing rules.[96]

The Gonzales guidelines are based on the Court En Banc's ruling therein that the transfer of jurisdiction effected by Section 5.2 of the SRC was directed at "the courts of general jurisdiction," that is, to the RTCs in general, rather than to the special commercial courts alone. In authorizing the Supreme Court to designate special commercial courts, the statute did not delegate the power to define subject matter jurisdiction; rather, it authorized the Supreme Court to designate the specific branches of the RTCs which will exercise the jurisdiction that has been vested in the RTCs in general.[97] This interpretation supersedes previous rulings which mandated the dismissal of intra-corporate cases that were mistakenly filed with the regular RTCs.[98] Under the current rules, mistakenly filed intra-corporate cases and non-intra-corporate cases can now be shuttled to the proper RTC.

Given that jurisdiction over both derivative suits and intra-corporate controversies has now been essentially coalesced with the RTCs, the objection interposed in Saura and Lisam with respect to the SEC's lack of competence and jurisdiction over non-corporate issues that may be implicated in a derivative suit, or over parties without any relation to the corporation, has already been obviated. In Concorde Condominium, Inc. v. Baculio,[99] we ruled that

special commercial courts are still considered courts of general jurisdiction, and are therefore empowered not only to hear and decide cases under its general jurisdiction, but also to assume jurisdiction over parties unrelated to the corporation.[100]

Furthermore, splitting the exercise of jurisdiction over cases governed by the 2001 IRPIC between the regular courts and the special commercial courts, as the assailed CA decision decrees, could lead to confusion and case management problems. For the sake of uniformity and efficiency in judicial administration, it is imperative that all cases governed by the 2001 IRPIC, derivative suits included, be tried by the special commercial courts.

VI.

Applying the foregoing disquisitions to the case at bar, we find that while SARC's suit is indeed a derivative suit which is transferable to the relevant special commercial court in accordance with the Gonzales guidelines, it nevertheless suffers from fatal defects which merit its dismissal.

SARC's petition expressly alleges that it is being filed as a derivative suit:

> 6. This is a stockholder's derivative suit instituted by PETITIONERS RAMON A. SALAZAR, JR., ROGER A. SALAZR, ROBERT A. SALAZAR and ROSEMARIE S. FERNANDEZ for and in behalf of SALAZAR ANG REALTY CORPORATION (Plaintiff-corporation), as its incorporators and stockholders x x x. Said Petitioners were stockholders of the corporation at the time that: 1) a loan in the amount of EIGHTEEN MILLION FIVE HUNDRED THOUSAND PESOS was obtained from the Respondent Bank evidenced by a promissory note (Annex "B") allegedly signed by the late Consuelo Ang Salazar and Ralph Ang Salazar as representatives of Tacloban RAS Construction Corporation x x x; 2) the mortgage contract (Annex "C") in favor of the Respondent bank was allegedly executed by the corporation through the late Consuelo A. Salazar who was described as the corporation's President and its Secretary Ralph A. Salazar x x x;
>
> x x x x
>
> 7. This suit is brought by the above[-]mentioned incorporators and stockholders for the following reasons:
>
> x x x x
>
> 7.2. Ramon Ve. Salazar, director and Vice President of the Corporation died on March 30, 1995, before the mortgage contract which is sought to be declared null and void was executed. No document was filed with the SEC which shows that an election was held by the board of directors in order to fill the vacancy. Consuelo A. Salazar passed away last October 21, 2001. The remaining directors of the corporation have not taken any steps to vindicate the corporation's rights. Demand upon the board of directors to file suit in behalf of the corporation would be useless in that the mortgage contract, the validity of which is being questioned in this suit appeared to have been approved by said board through a supposed board resolution certified by the corporate secretary Ralph A. Salazar and the Secretary's Certificate of said resolution was annotated on the titles issued in the name of Salazar Ang Realty Corporation. This however, cannot be determined with certainty by the Petitioners stockholders as Ralph A. Salazar acting as the corporate secretary of Plaintiff Corporation has custody of the stock and transfer book as well as the resolutions and other documents and papers of the corporation.
>
> 7.3. Time is of the essence considering that corporate assets have now been registered in the name of the Respondent Bank and the exhaustion of remedies within the corporation which would delay the filing of a suit would only cause irreparable damage to the corporation.[101]

Apart from the express statement in paragraph 6, the rest of the petition's allegations clearly reveal that the crux of the dispute is the illegal and ultra vires approval of the mortgage by the SARC board without the consent of the suing shareholders, and despite the vacancies in the board created by the deaths of Ramon Sr. and Consuelo. These allegations unmistakably show the existence of a "controversy arising out of intra-corporate relations," with the suing shareholders assailing the decisions of Ralph and the SARC board. The non-joinder of Ralph and the other officers or shareholders of SARC, or even of Tacloban RAS, is of no moment, because non-joinder of parties is not a ground for dismissal, and the court can order their inclusion at any time.[102] While the reliefs sought are directed at Metrobank and the officers who conducted the auction sale, the suing shareholders' cause of action is ultimately rooted in the illegal and improper ratification and authorization of the mortgage contract by Ralph and the SARC board.

Having established that the petition is a derivative suit, we determine its compliance with the requisites therefor under the 2001 IRPIC.

There is no question that the suit was brought in SARC's name by Ramon et al., who were stockholders at the time the assailed mortgage contract was entered into. The petition also contains allegations justifying the non-exhaustion of intra-corporate remedies.[103] However, it does not comply with Rule 1, Section 1(3) of the 2001 IRPIC, regarding the availment of appraisal rights.

Among the grounds raised by SARC for the nullification of the mortgage contract is that it constitutes an encumbrance of substantially all the assets of the corporation which must be authorized by its stockholders in a meeting for that purpose, pursuant to Section 40 of the Corporation Code.[104] Under that provision, a mortgage of all or substantially all of the corporation's assets is subject to the exercise of the appraisal right. It was therefore incumbent upon herein respondents to make particular allegations regarding their availment of their appraisal rights or the impossibility or futility thereof.[105] Under the 2001 IRPIC, a derivative suit must particularly allege that there are no appraisal rights available against the assailed corporate action.[106] Conversely, if appraisal rights are available, such fact must be alleged and the non-availment thereof must be properly explained, moreso since a derivative suit must particularly allege that the stockholder exerted all reasonable efforts to exhaust all remedies available under the laws and regulations governing the corporation.[107]

Furthermore, SARC's petition lacks a categorical statement that it is not a nuisance or harassment suit. In order to provide legal justification for what is essentially an unauthorized suit filed on behalf of the corporation, stockholders who resort to the equitable remedy of a derivative suit must categorically declare under oath that the remedy is being sought for just and legitimate purposes and not as a form of nuisance or harassment.[108] This principle is now enshrined in Rule 8, Section 1 of the 2001 IRPIC, which explicitly states that nuisance or harassment suits shall be dismissed.[109]

To conclude, we reiterate that a derivative suit is an equitable exception to the rule that the corporate power of suit is exercisable only through the board of directors. A proper resort to this equitable procedural device must satisfy the requisites laid down by law and procedure for its institution; thus, courts must deny resort when such requisites are not met.[110]

WHEREFORE, the present petition is **GRANTED**. The March 25, 2014 Decision and the May 8, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 05050 are hereby **REVERSED** and **SET ASIDE**. Civil Case No. 2001-11-164, entitled Salazar Ang Realty Corporation, represented by Incorporators-Stockholders Ramon A. Salazar, Jr., Robert A. Salazar, Roger A. Salazar and Rosemarie Salazar-Fernandez, versus Metropolitan Bank & Trust Company, Ex Officio Sheriff Atty. Blanche Astilla Salino, Sheriff IV Luis G. Copuaco, and the Register of Deeds, Tacloban City, is hereby **DISMISSED**.

SO ORDERED.

Gesmundo, C.J., (Chairperson), Caguioa, Inting, and Dimaampao, JJ., concur.

Footnotes

* Also referred to in the records as "Salazar Ang Realty Corporation".

** Presiding Judge Rogelio C. Sescon of the Regional Trial Court of Tacloban City, Branch 9 was dropped as a party respondent pursuant to Rule 45, Section 4 of the Rules of Court. See Supreme Court Resolution dated August 17, 2015, *rollo,* p. 528.

[1] *Id.* at 32-68.

[2] *Id.* at 12-24. Promulgated on March 25, 2014. Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Gabriel T. Ingles and Ma. Luisa C. Quijano-Padilla concurring.

[3] *Id.* at 27-29. Promulgated on May 8, 2015. Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Gabriel T. Ingles and Ma. Luisa C. Quijano-Padilla concurring.

[4] *Id.* at 140-145.

[5] *Id.* at 146.

[6] *Id.* at 34.

[7] *Id.* at 178-180.

[8] *Id.* at 147.

[9] *Id.*

[10] *Id.* at 149, 195.

[11] Hereinafter referred to as Ralph. Also referred to in the records as "Ralph Pastor A. Salazar".

[12] Hereinafter referred to as Consuelo.

[13] *Rollo,* p. 148.

[14] *Id.* at 162

[15] *Id.* at 148.

[16] *Id.* at 148-149, 193-194, 225.

[17] *Id.* at 150-153.

[18] *Id.* at 162.

[19] *Id.* at 149.

[20] *Id.* at 150.

[21] *Id.* at 225-226.

[22] *Id.* at 275-281, 300.

[23] *Id.* at 216.

[24] *Id.* at 215.

[25] *Id.* at 210-214.

[26] *Id.* at 150-153.

[27] *Id.* at 219-223.

[28] *Id.* at 154-155.

[29] *Id.* at 156-157.

[30] *Id.* at 157-160.

[31] *Id.* at 160-161.

[32] *Id.* at 161-162.

[33] *Id.* at 162-164.

[34] Procedure in Extra-Judicial Foreclosure of Mortgage.

[35] *Rollo,* pp. 164-173.

[36] *Id.* at 174.

[37] *Id.* at 305-307.

[38] *Id.* at 307.

[39] *Id.* at 307-308.

[40] *Id.* at 311-312.

[41] *Id.* at 311.

[42] *Id.* at 337.

[43] *Id.*

[44] *Id.* at 338.

[45] *Id.* at 350.

[46] *Id.* at 426-431.

[47] *Id.* at 435-437.

[48] *Id.* at 433-434.

[49] *Id.* at 79.

[50] *Id.* at 454-456.

[51] *Id.* at 455-456.

[52] *Id.* at 459-464.

[53] *Id.* at 459-461.

[54] *Id.* at 144.

[55] *Id.* at 145.

[56] *Id.* at 146.

[57] *Id.* at 465-473.

[58] *Id.* at 115-116.

[59] Decree on the Reorganization of the Securities and Exchange Commission. Hereinafter referred to as SEC Reorganization Decree.

[60] *Rollo,* pp. 85-87.

[61] *Id.* at 87.

[62] *Id.* at 86-87.

[63] *Id.* at 87. Emphasis in the original.

[64] *Id.* at 87-88.

[65] *Id.* at 478-493.

[66] *Id.* at 51-52. Citations omitted.

[67] REPUBLIC ACT NO. 8799, enacted on July 19, 2000.

[68] See Sunset View Condominium Corp. v. Hon. Campos, Jr. etc., et al., 191 Phil. 606, 610-611 (1981); Philex Mining Corp. v. Hon. Reyes, et al., 204 Phil. 241, 245-246 (1982); Union Glass & Container Corp., et al. v. SEC, et al., 211 Phil. 222, 236 (1983); DMRC Enterprises v. Este Del Sol Mountain Reserve, Inc., 217 Phil. 280, 287 (1984); Zaide, Jr. v. Court of Appeals, 263 Phil. 464, 469 (1990); Securities and Exchange Commission v. Court of Appeals, 278 Phil. 141, 154 (1991); Espino v. NLRC, et al., 310 Phil. 60, 73 (1995).

[69] A.M. No.00-11-03-SC, Designation of Certain Branches of RTCs to Try and Decide Cases Formerly Cognizable by SEC, November 21, 2000; A.M. No. 03-03-03-SC, Re: Consolidation of Intellectual Property Courts with Commercial Courts, June 17, 2003.

[70] The original heading of the resolution enacting the 2001 IRPIC is "RE: Proposed Interim Rules of Procedure Governing Intra-Corporate Controversies under R.A. No. 8799".

[71] Cua, Jr., et al. v. Tan, et al., 622 Phil. 661, 715-716 (2009), citing I Jose C. Campos & Ma. Clara Lopez-Campos, THE CORPORATION CODE: COMMENTS, NOTES, AND SELECTED CASES 819-820 (1990). Emphasis and underlining supplied.

[72] G.R. Nos. 210906 & 211203, October 16, 2019.

[73] *Id.* Citations omitted.

[74] 257 Phil. 459 (1989).

[75] *Id.* at 470. Citations omitted. These requisites are derived from earlier jurisprudence. See citations in the original reported text. See also I Jose C. Campos & Ma. Clara Lopez-Campos, *supra* note 71 at 820- 821.

[76] Villamor, Jr. v. Umale, 744 Phil. 31, 46-47 (2014).

[77] Forest Hills Golf and Country Club, Inc. v. Fil-Estate Properties, Inc., et al., 790 Phil. 729, 743-744 (2016).

[78] The bringing of the suit in the corporation's name is a requisite for a derivative suit which is implicit from the first sentence of Rule 8, Section 1 of the 2001 IRPIC. Villamor, Jr. v. Umale, *supra* note 76. The corporation is an indispensable party in a derivative suit. Cua, Jr., et al. v. Tan, et al., *supra* note 71 at 688. Thus, any judgment rendered without impleading the corporation is null and void. See Guy, et al. v. Guy, 694 Phil. 354 (2012).

[79] See REPUBLIC ACT NO. 296, Sections 44 & 86, in relation to the following cases: Gamboa v. Victoriano, 179 Phil. 36, 42-43 (1979); Republic Bank v. Cuaderno, et al., 125 Phil. 1076, 1083 (1967); Evangelista v. Santos, 86 Phil. 387, 395 (1950); Everett v. Asia Banking Corporation, et al., 49 Phil. 512, 527 (1926); and Pascual v. Del Saz Orozco, 19 Phil. 82, 95-96 (1911).

[80] See Lisam Enterprises, Inc., et al. v. Banco de Oro Unibank, Inc., et al., 686 Phil. 293 (2012); Saura v. Saura, Jr., 372 Phil. 337 (1999); Union Glass & Container Corp., et al. v. SEC, et al., 211 Phil. 222 (1983).

[81] SEC REORGANIZATION DECREE, Section 5, Paragraph (b).

[82] *Id.*, id., Paragraphs (a) and (c). See Ku v. RCBC Securities, Inc., G.R. No. 219491, October 17, 2018, citing Medical Plaza Makati Condominium Corp. v. Cullen, 720 Phil. 732, 742-743 (2013).

[83] Speed Distributing Corp. v. Court of Appeals, 469 Phil. 739, 758-759 (2004). Citations omitted.

[84] Reyes v. Hon. RTC of Makati, Branch 142, et al., 583 Phil. 591, 608 (2008). Citations omitted.

[85] PHILCOMSAT Corp., et al. v. Sandiganbayan 5th Division, et al., 760 Phil. 893, 905 (2015).

[86] San Jose, et al. v. Ozamiz, 813 Phil. 669, 679 (2017).

[87] See Imperial, et al. v. Judge Armes, et al., 804 Phil. 439, 470 (2017), and cases cited therein.

[88] *Supra* note 80.

[89] *Id.* at 305.

[90] *Supra* note 80.

[91] *Id.* at 348-349. Contra, Aquino, J., dissenting in Union Glass & Container Corp., et al. v. SEC, et al., *supra* note 80.

[92] 343 Phil. 742, 754 (1997).

[93] *Supra* note 77.

[94] *Id.* at 741-742. Citations omitted, emphasis and underlining supplied.

[95] 772 Phil. 483 (2015).

[96] *Id.* at 518-519.

[97] *Id.* at 506.

[98] See Calleja v. Panday, 518 Phil. 801, 809 (2006).

[99] 781 Phil. 174 (2016).

[100] See also GD Express Worldwide N.V., et al. v. Court of Appeals (4th Div.), et al., 605 Phil. 406, 418-419 (2009).

[101] *Rollo,* pp. 148-150. Underlining and emphasis supplied.

[102] RULES OF COURT, Rule 3, Section 11; Divinagracia v. Parilla, et al., 755 Phil. 783, 792 (2015); Gamboa v. Victoriano, 179 Phil. 36 (1979).

[103] Non-exhaustion of intra-corporate remedies is justified where demand upon the board to exercise the corporate power of suit is pointless, e.g., when the defendants are in complete control of the corporation, or the acts complained of were ostensibly approved by a majority of shareholders despite proof of prejudice to the corporation. See Ago Realty & Development Corp. v. Ago, *supra* note 72; Republic Bank v. Cuaderno, Evangelista v. Santos, and Everett v. Asia Banking Corp., *supra* note 79.

[104] *Id.* at 160-161.

[105] Cf. Villamor, Jr. v. Umale, *supra* note 76 at 50.

[106] Forest Hills Golf and Country, Club, Inc. v. Fil-Estate Properties, Inc., *supra* note 77 at 741; Spouses Yu, et al. v. Yukayguan, et al., 607 Phil. 581, 611 (2009).

[107] Ching, et al. v. Subic Bay Golf and Country, Club, Inc., et al., 742 Phil. 606, 614 (2014); Spouses Yu, et al. v. Yukayguan, id.

[108] Spouses Yu, et al. v. Yukayguan, id. at 611.

[109] See Cua, Jr., et al. v. Tan, et al., *supra* note 71 at 722; Spouses Yu, et al. v. Yukayguan, id. at 612.

[110] Forest Hills Golf and Country Club, Inc. v. Fil-Estate Properties, Inc., *supra* note 77 at 744; Spouses Yu, et al. v. Yukayguan, id. at 596, citing Bitong v. Court of Appeals, 354 Phil. 516, 545 (1998).

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REPUBLIC OF THE PHILIPPINES
Supreme Court
Manila

THIRD DIVISION

[G.R. No. 261125, July 26, 2023]

PETER PAUL G. MARASIGAN, PETITIONER, VS. BENITO G. MARASIGAN, ET AL., RESPONDENTS.

D E C I S I O N

SINGH, *J.:*

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision,[2] dated December 28, 2021, and the Resolution,[3] dated May 24, 2022, of the Court of Appeals (**CA**), in CA-G.R. SP No. 168189. The assailed CA Decision and Resolution reversed and set aside the Decision,[4] dated February 3, 2021, of the Regional Trial Court (**RTC**), Branch 159, Pasig City which declared that the meetings of the domestic corporation, Ganco Resorts & Recreation Incorporated (**Ganco**), on November 6 and 12, 2017 and May 15, 2018, lacked the proper quorum due to the death of its majority stockholder.[5]

The Petition was filed by Peter Paul Marasigan (**Peter**), against respondents Benito, Orlando, and Rommel (all surnamed **Marasigan;** collectively, the **respondents**). After a review of the records, the Court resolves to deny the same for failure to sufficiently show that the CA committed any reversible error to warrant the exercise of the Court's discretionary appellate jurisdiction.

The Facts

All the parties in the original complaint are children of the late spouses Cesar Marasigan (**Cesar**) and Luz Marasigan (**Luz**) (collectively, the **Spouses Marasigan**), save for Cesar Augustine C. Marasigan III (**Cesar Augustine**), who is the grandson of the Spouses Marasigan.[6] The Spouses Marasigan acquired several properties, including La Luz Beach Resort, a private beach resort in San Juan, Batangas, and their conjugal dwelling in Mabini Street, Addition Hills, San Juan City (**Mabini Street property**). Cesar passed away in 2001, but his estate has not yet been settled.

In 2013, Luz together with her 13 children (**Marasigan siblings**) incorporated Ganco, as a close corporation, and established its principal office at the Mabini Street property. Of the 5,600 total subscribed shares, Luz subscribed to 3,000 shares, while her children subscribed to 200 shares each, or 2,600 shares in total.[7]

Ganco's Articles of Incorporation[8] (**AOI**) provided that the corporation's business "shall be managed by the board of directors who are the stockholders."[9] This set-up is likewise reflected in its by-laws.[10]

In 2017, the following stockholders were elected as Ganco's officers:

Chairman of the Board	-	Luz Marasigan
President	-	Peter Marasigan
Vice President	-	Benito Marasigan
Treasurer	-	Regina Marasigan-Palileo
Secretary	-	Orlando Marasigan[11]

Since becoming the President of Ganco in 2015, Peter claimed that he has not had any vacation. Thus, in August 2017, he requested for an authority to take a leave of absence for six weeks to visit his daughter in Australia and to also visit New Zealand. Luz allowed Peter to take a six-week vacation leave. On November 3, 2017, while Peter was still on vacation, Luz passed away. He then cut his vacation on November 4, 2017 and returned to Manila on the following day.[12]

On November 6, 2017, the children of the Spouses Marasigan, who are likewise Ganco's stockholders, met at the office of Rommel and elected a new set of officers. Of the then 13 stockholders, eight stockholders were considered present – only five were physically present at the said meeting, but they were joined by three others via video conference.[13]

According to Peter, the meeting was conducted despite the lack of any prior notice, agenda, or valid call for a meeting. Then Corporate Secretary Orlando declared *a quo*rum, and it was tagged as a Special Board and Stockholders Meeting.[14]

In the said meeting, Benito declared that he was assuming the position of President, as Peter had been on absence without leave. Thus, Peter was removed and replaced by Benito as Interim President.[15]

On November 12, 2017, Luz was buried. After the burial, nine members of the family gathered and discussed the settlement of the estate, payment of estate taxes, and the Mabini Street property.[16]

On May 11, 2018, Orlando, the Corporate Secretary, issued an official notice to the stockholders that the Annual Shareholders' Meeting shall not proceed as the majority shares of Luz had to be settled and distributed.[17]

On May 15, 2018, the Annual Stockholders' Meeting of Ganco was held. Orlando and Regina were physically present, while seven others joined via video conference. In the said meeting, the following stockholders of Ganco were elected as officers:

Chairman of the Board	-	Gabriel Marasigan
President	-	Regina Marasigan-Palileo
Vice President	-	Peter Marasigan
Treasurer	-	Renato Marasigan
Secretary	-	Peter Marasigan[18]

The new signatories to the Ganco bank accounts, i.e., Regina, Peter, and Renato, were likewise appointed during the meeting.

Thereafter, the respondents refused to recognize the new officers, and to turnover possession and control of the assets and records of Ganco to the newly elected officers.[19] According to Peter, they allegedly attempted to encash checks worth millions at Ganco's depository banks.[20]

To protect the assets of the corporation, the newly elected officers informed Ganco's depository banks that the respondents were no longer authorized to represent Ganco. The respondents, however, insisted that they were still the officers of Ganco, causing the banks to freeze the corporation's accounts.[21]

After the Annual Stockholders' Meeting on May 15, 2018, the respondents executed a General Information Sheet for Ganco, stating that there was an Annual Stockholders Meeting on November 12, 2017, and that they were still the officers of the corporation.

As the corporation's bank accounts had been frozen, the respondents allegedly collected fees and payments from guests of La Luz Beach Resort, in cash or through their personal bank accounts, and disallowed checks or online payments.[22]

The respondents, together with stockholders and siblings, Jose and Gerardo, filed a Complaint for Declaration of Nullity of Meetings, Board Resolutions and Election of Officers with Prayer for Issuance of a Temporary Restraining Order (**TRO**) and/or Writ of Preliminary Injunction. They sought to be recognized as the legitimate officers of Ganco and to have the Annual Stockholders' Meeting on May 15, 2018 declared null and void.[23]

The Ruling of the RTC

In its Order, dated June 1, 2018, the RTC denied the TRO prayed for by the respondents after finding that there was no extreme urgency for the issuance of the TRO. Similarly, the RTC denied the application for a Writ of Preliminary Injunction through its Order, dated January 6, 2020. Additionally, upon the motion of the defendants in the RTC case (**Peter, et al.**), Jose and Gerardo were dropped as plaintiffs.[24]

In its Decision,[25] dated February 3, 2021, the RTC held that as the estate of Luz had yet to be settled, both parties did not automatically become owners or transferees of her shares in Ganco. It noted that they should not be able to exercise the rights of a stockholder, which is an incident of ownership, for purposes of *a quo*rum for the conduct of stockholders' and directors' meetings, moreso for the election of its officers. The RTC also found, that for the same reason, Cesar Augustine, cannot be allowed to exercise the stockholder rights of his father, Cesar Jr. Thus, it dismissed the complaint.

> **WHEREFORE,** in view of the foregoing, the instant Complaint is hereby **DISMISSED**. Due to lack of quorum in the meetings held on November 6, 2017, November 17, 2017 [sic] and May 15, 2018, the following corporate officers of Ganco for year 2017, that were elected immediately preceding the death of majority stockholder Luz Marasigan, namely, defendant Peter Paul Marasigan, as President, plaintiff Benito Marasigan as Vice-President, defendant Regina Marasigan-Palileo as Treasurer and plaintiff Orlando Marasigan as Corporate Secretary, are hereby immediately reinstated to their positions in a hold-over capacity until a new setoff officers are validly elected.
>
> **SO ORDERED.**[26]

The dismissal prompted the respondents to file a Petition for Review under Rule 43 with the CA.

The Ruling of the CA

In a Decision,[27] dated December 28, 2021, in CA-G.R. SP No. 168189, the CA reversed and set aside the RTC Decision.

> **WHEREFORE,** the petition is **GRANTED**. The decision of the Regional Trial Court of Pasig City, Branch 159 dated February 3, 2021 in R-PSG-18-01223-CV is **REVERSED** and **SET ASIDE**. The special meeting and election of petitioners as officers of the corporation on November 12, 2017 are declared valid and ratified. Said officers shall continue to act as such until regular officers are elected pursuant to law and by-laws of Ganco. The annual meeting of stockholders and election of officers held on May 15, 2018, as well as resolutions or actions subsequent to and arising from said annual meeting and election are declared null and void. The prayer in the complaint for damages and attorney's fees is denied.
>
> **SO ORDERED.**[28]

While the CA agreed with the RTC in so far as it held "that both petitioners and respondents did not automatically acquire ownership of the shares of Luz Marasigan in Ganco after her death," it digressed with respect to the RTC's conclusion that the special meetings on November 6, 2017, and November 12, 2017 are null and void for lack of quorum.[29]

The CA held that under Section 25 of the Corporation Code, the quorum for election of officers is not based on the majority of outstanding capital stock, but on all members of the board of directors. As such, it found that the remaining 13 stockholders of Ganco, who are also its directors, may elect their officers based on a valid quorum of eight stockholders or directors. The CA also noted that there was no prompt written objection to the meeting or election, hence, such acts were considered ratified under Section 101 of the Corporation Code.[30]

Additionally, the CA ruled that the Annual Stockholders' Meeting held on May 15, 2018, is not valid for lack of quorum, which in this case, must be the majority of the outstanding capital stock. It pointed out that the conduct of the meeting was also violative of Ganco's by-laws as there was no notice sent by the Corporate Secretary; in fact, the Corporate Secretary even sent an official notice to the stockholders that such meeting will not push through, pending the settlement of Luz's estate.[31]

In a Resolution,[32] dated May 24, 2022, the CA denied Peter's Motion for Reconsideration after finding that the arguments therein did not warrant a reconsideration or modification of its earlier Decision.

> **WHEREFORE,** the Motion for Reconsideration and Supplemental Motion for Reconsideration with Motion to Admit are **DENIED**.
>
> **SO ORDERED.**[33]

The CA's denial prompted Peter to file a Petition for Review on *Certiorari* under Rule 45 with the Court.

In the Petition, Peter argues that as Ganco is a close corporation, it should be primarily governed by Title XII (Close Corporations) of the Old Corporation Code, Batas Pambansa Blg. 68 (Old Corporation Code),[34] and the rules on election of officers, under Section 25 thereof, therefore, do not apply to it. Additionally, Peter argues that Section 25 merely provides for a minimum requirement, and expressly recognizes that a corporation may provide otherwise

through its AOI or by-laws. In this case, Peter contends that Ganco's by-laws provide for a greater majority to constitute *a quo*rum.[35]

Peter further posits that per Ganco's by-laws, it is the stockholders, not the directors, that shall elect the board officers, as it has no elected board. As stockholders directly manage the corporate business, the scenario contemplated under Section 25, of an elected board of directors, cannot pertain to Ganco.[36] He further adds that the Revised Corporation Code[37] under the new Section 25 now provides, that notwithstanding any provision of the AOI or by-laws to the contrary, shares of stock represented at such meeting and entitled to vote shall constitute *a quo*rum for purposes of conducting an election.[38]

As to the nature of the meetings, Peter challenges the CA's reliance on Section 101 of the Old Corporation Code, as he claims that the said provision refers to a directors' meeting. He asserts that the meetings held on November 6 and 12, 2017, and May 15, 2018 are stockholders', not directors' meetings.[39]

Finally, Peter claims that the respondents have made duplicitous statements in a separate but related criminal case pending before the RTC of Pasig City which "makes a mockery of justice." According to Peter, in the said criminal case, the respondents have made statements to the effect that Ganco did not have a functioning board from the time of their mother's death, negating their assertions in this case.[40]

The Issues

1. Did the CA err in ruling that the special meeting and election of petitioners as officers of Ganco on November 6 and 12, 2017 are valid and that the same had been ratified?

2. Did the respondents make duplicitous statements?

The Court is asked to determine the validity of Ganco's meetings on November 6 and 12, 2017 and the acts proceeding therefrom, in particular the election of its board officers, based on Ganco's AOI, its by-laws, and the applicable provisions of the Old Corporation Code, Batas Pambansa Blg. 68,[41] which was then in effect.

The nature of the assailed meetings, whether they are stockholders' or directors' meetings, is central to the resolution of this case.

The Ruling of the Court

After a review of the records, the Court holds that the CA made no reversible error as it correctly reversed and set aside the RTC Decision, dated February 3, 2021.

As a close corporation, Ganco must specifically invoke the privileges and exemptions it opts to exercise in its AOI

In *San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals,*[42] the Court had occasion to illustrate that a corporation's classification as a close corporation rests on whether its AOI has expressly provided for the requisites under Section 96 of the Corporation Code:

> Section 96 of the Corporation Code defines a close corporation as follows:
>
> > SEC. 96. *Definition and Applicability of Title.* -- A close corporation, within the meaning of this Code, is one whose articles of incorporation provide that: (1) All of the corporations issued stock of all classes, exclusive of treasury shares, shall be held of record by not more than a specified number of persons, not exceeding twenty (20); (2) All of the issued stock of all classes shall be subject to one or more specified restrictions on transfer permitted by this Title; and (3) The corporation shall not list in any stock exchange or make any public offering of any of its stock of any class. Notwithstanding the foregoing, a corporation shall be deemed not a close corporation when at least two-thirds (2/3) of its voting stock or voting rights is owned or controlled by another corporation which is not a close corporation within the meaning of this Code.
>
> The articles of incorporation of Motorich Sales Corporation does not contain any provision stating that (1) the number of stockholders shall not exceed 20, or (2) a preemption of shares is restricted in favor of any stockholder or of the corporation, or (3) listing its stocks in any stock exchange or making a public offering of such stocks is prohibited. From its articles, it is clear that Respondent Motorich is not a close corporation. Motorich does not become one either, just because Spouses Reynaldo and Nenita Gruenberg owned 99.866% of its subscribed capital stock. The [m]ere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of

itself sufficient ground for disregarding the separate corporate personalities. So too, a narrow distribution of ownership does not, by itself, make a close corporation.[43]

In the case of Ganco, its AOI indicates that: (1) ownership of its stocks shall only be held by no more than 14 persons; (2) existing shareholders have the option to purchase shares of transferring stockholders under the terms specified therein; and (3) Ganco cannot list in any stock exchange or publicly offer any of its stocks.[44] Clearly, the AOI of Ganco satisfies the test laid out above, leaving no question that the same has been organized as a close corporation.

The Court has long recognized the importance of close corporations in the realm of Philippine commerce. In *Gala v. Ellice Agro-Industrial Corporation,*[45] the Court explained that:

> [t]he concept of a close corporation organized for the purpose of running a family business or managing family property has formed the backbone of Philippine commerce and industry. Through this device, Filipino families have been able to turn their humble, hard-earned life savings into going concerns capable of providing them and their families with a modicum of material comfort and financial security as a reward for years of hard work.[46]

Unlike regular corporations, stockholders of close corporations are limited in number, often they are related to if not acquainted with each other. It has been said that close corporations present a cross between a partnership and a corporation, whereby among themselves stockholders act and feel like partners, while availing of the advantages of corporate structure such as the limitation of their liability for losses to the amount of their investment.[47]

> **A close corporation is not simply a corporation; it is essentially the progeny of a marriage of commercial convenience between the essence of a partnership and that of a corporation.** A close corporation should be considered a distinct type of business organization embodying what businessmen perceive to be the best features of a partnership and a corporation.
>
> Under a free-market system, businessmen should be at liberty to adopt a business set-up that they feel is the best medium for the pursuit of their commercial affairs, so long as the route chosen by them is not contrary to law, morals, public policy, and public order. The strong juridical personality, limited liability and right of succession are all features of a corporate entity that the law upholds, and which businessmen may avail of. The feature of delectus personae, general management by all partners of business affairs are attractive features of a partnership which the law guarantees and supervise.[48] (Emphasis supplied)

Additionally, the management of its day-to-day operations likewise follows a more casual and *ad hoc* set-up, making it a more convenient choice for businesses run by families or closely-knit groups. This is markedly the most distinctive feature of the close corporation – the merger of the ownership and management rights.[49]

> **The nature of close corporations is such that stock ownership is usually identical with management.** Unlike in other corporations where the members of the board are merely representatives of the body of stockholders who, due to their bigger number, cannot directly manage corporate affairs efficiently, close corporation are composed usually of a smaller number of persons, closely related to each other by blood or other common interests, and all or most of whom directly participate in management. **Thus, they often find it unnecessary and even inconvenient to follow all the formal requirements for a board meeting, or even to hold formal board meetings at all. The Code recognizes this fact and even allows such close corporations to do away with the board entirely, treating the stockholders as directors.**[50] (Emphasis supplied)

The Court is aware that the Old Corporation Code clearly intended to carve out specific rules for close corporations in recognition of their unique set-up and composition. These rules have been retained even in the Revised Corporation Code under Title XII thereof.

Close corporations are thus allowed to provide in its AOIs special provisions pertaining to prerogatives otherwise not availing in regular corporations, such as the management of the corporation directly through its stockholders, and the election or appointment of corporate officers directly by the stockholders, instead of by the board of directors, under Section 97 of the Old Corporation Code. It provides:

> Section 97. *Articles of incorporation.* – The articles of incorporation of a close corporation may provide:
>
> 1. For a classification of shares or rights and the qualifications for owning or holding the same and restrictions on their transfers as may be stated therein, subject to the provisions of the following section;

> 2. For a classification of directors into one or more classes, each of whom may be voted for and elected solely by a particular class of stock; and
>
> 3. For a greater quorum or voting requirements in meetings of stockholders or directors than those provided in this Code.
>
> **The articles of incorporation of a close corporation may provide that the business of the corporation shall be managed by the stockholders of the corporation rather than by a board of directors.** So long as this provision continues in effect:
>
> 1. No meeting of stockholders need be called to elect directors;
>
> 2. Unless the context clearly requires otherwise, the stockholders of the corporation shall be deemed to be directors for the purpose of applying the provisions of this Code; and
>
> 3. The stockholders of the corporation shall be subject to all liabilities of directors.
>
> **The articles of incorporation may likewise provide that all officers or employees or that specified officers or employees shall be elected or appointed by the stockholders, instead of by the board of directors.** (Emphasis supplied)

A close corporation seeking to have its business managed by its stockholders must clearly indicate such intention in its AOI. The mere constitution of the corporation as a close corporation does not automatically make its stockholders the board directors or allow stockholders to directly elect or appoint the corporation's board officers.

Just as being a close corporation does not simply attach based on the concentrated ownership of shares in a single or few stockholders, but must be pursued through a compliance with the requirements for the establishment of a close corporation under Section 96 of the Old Corporation Code, so too, must the privileges or exemptions accorded to close corporations, under Section 97 or other relevant provisions, be expressly invoked and stipulated in the corporation's AOI or by-laws, as they may be required. As the language of Section 97 is clearly permissive, the general rules applicable to all other corporations shall apply if the close corporation fails to do so.

Again, the Court cannot overemphasize that a close corporation must expressly and properly invoke, in the appropriate instrument, the prerogatives and exemptions which it has been allowed to avail of under the Old Corporation Code.

Based on its AOI, the management of Ganco was left to its stockholders constituted as its board of directors

In a corporation, control and management are exercised along three levels of control. The *Court in Citibank N.A. v. Chua*[51] explains:

> In the corporate hierarchy, there are three levels of control: (1) the board of directors, which is responsible for corporate policies and the general management of the business affairs of the corporation; (2) the officers, who in theory execute the policies laid down by the board, but in practice often have wide latitude in determining the course of business operations; and (3) the stockholders who have the residual power over fundamental corporate changes, like amendments of the articles of incorporation. However, just as a natural person may authorize another to do certain acts in his behalf, so may the board of directors of a corporation validly delegate some of its functions to individual officers or agents appointed by it.[52]

In *Tan v. Sycip,*[53] the Court has aptly illustrated how the rights and prerogatives of stockholders and members of the board of directors differ. In the said case, the Court likewise depicted how the stockholders relinquish corporate powers to a duly constituted board of directors who are then charged with the management and operation of the corporation's business.

> Generally, stockholders' or members' meetings are called for the purpose of electing directors or trustees and transacting some other business calling for or requiring the action or consent of the shareholders or members, such as the amendment of the articles of incorporation and bylaws, sale or disposition of all or substantially all corporate assets, consolidation and merger and the like, or any other business that may properly come before the meeting.
>
> Under the Corporation Code, stockholders or members periodically elect the board of directors or trustees, who are charged with the management of the corporation. The board, in turn, periodically elects officers to carry out management functions on a day-to-day basis. As owners, though, the stockholders or members have residual powers over fundamental and major corporate changes.

> **While stockholders and members (in some instances) are entitled to receive profits, the management and direction of the corporation are lodged with their representatives and agents – the board of directors or trustees. In other words, acts of management pertain to the board; and those of ownership, to the stockholders or members.** In the latter case, the board cannot act alone, but must seek approval of the stockholders or members.
>
> Conformably with the foregoing principles, one of the most important rights of a qualified shareholder or member is the right to vote – either personally or by proxy – for the directors or trustees who are to manage the corporate affairs. The right to choose the persons who will direct, manage and operate the corporation is significant, because it is the main way in which a stockholder can have a voice in the management of corporate affairs, or in which a member in a nonstock corporation can have a say on how the purposes and goals of the corporation may be achieved. Once the directors or trustees are elected, the stockholders or members relinquish corporate powers to the board in accordance with law.[54] (Emphasis supplied; citations omitted)

While ownership ultimately pertains to stockholders, normally they cannot directly intervene in the day-to-day course of operations of the corporation, precisely because the same has been delegated to the board of directors, who have been entrusted with the exercise of corporate powers. However, as earlier discussed, this is not necessarily the case for close corporations wherein ownership and management usually merge in the same set of individuals who are both its stockholders and board of directors.

In view of this merger of ownership and management in close corporations, Section 97 of the Old Corporation Code allows close corporations to do away with board of directors all together. It provides that "[t]he articles of incorporation of a close corporation may provide that the business of the corporation shall be managed by the stockholders of the corporation rather than by a board of directors."

A careful reading of Ganco's AOI and by-laws reveal that the intention for Ganco is to be managed by a board of directors, comprised of its stockholders.

> ARTICLES OF INCORPORATION OF GANCO RESORTS & RECREATION INCORPORATED
>
> NINTH. The business of the Corporation shall be managed by the board of directors who are the stockholders of the Corporation. The stockholders shall be deemed to be the directors and shall function as such without need of further election of appointment.[55]
>
> BY-LAWS OF GANCO RESORTS & RECREATION INCORPORATED ARTICLE II. MEETINGS OF STOCKHOLDERS
>
> Section 1. Annual Meetings. – The annual meetings of stockholders shall be held at the principal office of the Corporation on the 15 May of each year, or if a legal holiday, then on the day following.
>
> Considering that the business of the Corporation shall be managed directly by the stockholders, being themselves the board of directors, then the stockholders shall likewise have regular meetings.[56]

Ganco's AOI refers to "the board of directors who are the stockholders of the Corporation," while its by-laws refers to "the stockholders, being themselves the board of directors." This only means the stockholders have been charged to assume dual roles as stockholders and as directors.

When, as in this case, stockholders are designated as board directors, each individual stockholder, regardless of the number of shares they own, is deemed a director, member of the constituted board, entitled to one vote in the exercise of corporate powers. In the case of Ganco, all of its 14 stockholders were clothed with corporate powers as a group, wherein each stockholder, no matter how miniscule his or her ownership of the shares, becomes one voice alongside 13 other directors.

The decision to designate all of Ganco's stockholders as the board of directors carries with it a limitation of the corporate powers that may be ascribed to Luz, who in an alternative set-up may wield more control over the corporation as the majority shareholder with over 50% of its authorized capital stock. Consequently, such power is dispersed among her children who, by virtue of their inclusion in the board of directors, are given more say in how the business of the corporation is run.

Again, the designation of Ganco's stockholders as its board of directors clearly does not mean that they simply remain as such stockholders and are subject only to rules concerning such stockholders even when they perform acts vested in the board directors. When they assume corporate powers reserved by law for board directors, they are subject to the rules governing directors. Their designation in the AOI as board of directors only does away with the necessity for their election as such board directors, but it does not exclude them from the operation of rules that necessarily apply to board directors, including those which govern directors' meetings. To reiterate, the second paragraph of Section 97 of the Old Corporation Code, specifies:

The articles of incorporation of a close corporation may provide that the business of the corporation shall be managed by the stockholders of the corporation rather than by a board of directors. So long as this provision continues in effect:

1. No meeting of stockholders need be called to elect directors;

2. Unless the context clearly requires otherwise, the stockholders of the corporation shall be deemed to be directors for the purpose of applying the provisions of this Code; and

3. The stockholders of the corporation shall be subject to all liabilities of directors.

The articles of incorporation may likewise provide that all officers or employees or that specified officers or employees shall be elected or appointed by the stockholders, instead of by the board of directors. (Emphasis supplied)

The CA correctly considered the special meetings held on November 6 and 12, 2017 as directors' meetings

When Ganco's AOI provided that the corporation's business "shall be managed by the board of directors who are the stockholders," it likewise provided for a single quorum requirement for its meetings – a majority of the outstanding capital stock. Without distinguishing between stockholders' and directors' meetings, the quorum requirement applies to both such meetings.

NINTH. **The business of the Corporation shall be managed by the board of directors who are the stockholders of the Corporation.** The stockholders shall be deemed to be the directors and shall function as such without need of further election or appointment.

TENTH. **A majority of the outstanding capital stock shall constitute *a quo*rum for a valid meeting.** An affirmative vote of stockholders representing at least a majority of its outstanding capital stock of the stockholders present at a meeting at which there is *a quo*rum shall be necessary for the approval of any transaction which requires the Corporation's approval except instances greater votes is required by law.[57] (Emphasis supplied)

The same observation can be made with respect to Ganco's by-laws, which only contains a section on "Meetings of Stockholders" and glaringly lacks a separate section on board of directors' meetings. Nonetheless, from the language employed, it appears that the quorum requirements set under Article II, Section 7 of the by-laws was intended to apply to both stockholders' and directors' meetings.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 1. Annual Meetings – The annual meetings of stockholders shall be held at the principal office of the Corporation on the 15 May of each year, or if a legal holiday, then on the day following.

Considering that the business of the Corporation shall be managed directly by the stockholders, being themselves the board of directors, then the stockholders shall likewise have regular meetings.

x x x x

Section 7. **Quorum – Majority of the outstanding capital stock as fixed in the Articles of Incorporation shall constitute *a quo*rum for the transaction of corporate business and every decision of at least a majority of the outstanding capital stock of the stockholders present at a meeting at which there is *a quo*rum shall be valid as a corporate act.** If no quorum is constituted, the meeting shall be adjourned until the requisite amount of stocks shall be represented.[58] (Emphasis supplied)

Despite the nuances between the roles of Luz and her children as stockholders and directors of Ganco, its AOI and by-laws as written failed to distinguish. Perhaps it was thought to be of no practical value, considering that the stockholders are themselves the board directors or perhaps, it was a mere omission. Regardless, there are significant considerations that justify making the distinction, which the CA correctly made.

For the Marasigan siblings, while their right to corporate profits is limited by their shares, their right to participate in the management of the family business is expanded by their express inclusion in the board of directors. As earlier mentioned, Luz and each of her children, regardless of their number of shares, stand as equals when they are acting as directors.

The practice of the Marasigan siblings, as reflected in the Minutes of their November 6 and 12, 2017 meetings, is quite telling. The Minutes clearly indicate that despite the ambiguity in the language of Ganco's AOI and by-laws as regards the quorum requirement for directors' meetings, the number of directors present is considered in the determination of the quorum.

VI. Meeting Proper

1. Determination of quorum

a. **Having 8 members present representing majority of shares and of board members,** the Secretary declares that there is quorum.[59] (Emphasis supplied)

Therefore eight of the 14 stockholders (Luz and her 13 children) were stated to represent the majority of the stockholders, and validly constitute *a quo*rum.

Further, the agenda of the special meeting held on November 6, 2017 included an item on the "Status of the President and a call for a vote on the said position."[60] The Minutes of the special meeting clearly captured the understanding of the directors that it was a *special board and stockholders meeting.*[61] The nature of the said meeting as such was discussed therein, thereby contradicting the assertion of Peter that it was only intended as a stockholders meeting, or that there was such a distinction. The Minutes also showed how Peter, who was then the President, was removed and an Interim President installed in his stead upon the vote of the directors.[62]

The Minutes of the special meeting on November 6, 2017 was silent on whether it was meant to be a stockholders meeting, a directors meeting, or both. However, during this special meeting, the directors elected a new set of board officers – the Chairperson, President, Vice President, Treasurer, and Secretary.[63] The election of board officers clearly pertains to the prerogative of the board of directors and is a practice observed in Ganco.

Section 25 of the Old Corporation Code expressly refers to the election of officers by the board of directors. Thus, when its stockholders are electing their President, Vice President, Treasurer, and Secretary, who are their board officers, the Marasigan siblings are clearly acting as directors and not as stockholders.

> Section 25. *Corporate officers, quorum.* – Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the bylaws. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time. The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and the by-laws of the corporation. Unless the articles of incorporation or the by-laws provide for a greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute *a quo*rum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is *a quo*rum shall be valid as a corporate act, **except for the election of officers which shall require the vote of a majority of all the members of the board.** Directors or trustees cannot attend or vote by proxy at board meetings. (Emphasis supplied)

At this point, it is worth highlighting that among the privileges afforded to close corporations is the election or appointment of corporate officers directly by the stockholders. The last paragraph of Section 97 provides that "[t]he articles of incorporation may likewise provide that all officers or employees or that specified officers or employees shall be elected or appointed by the stockholders, instead of by the board of directors."

There would have been no need to make the distinction herein as to whether the November 6 and 12, 2017 Meetings are stockholders' or directors' meetings had there been such a provision in Ganco's AOI allowing the direct election or appointment of the corporate officers by the stockholders. Unfortunately, such a provision only appears in its by-laws,[64] failing to satisfy the requirement under Section 97 of the Old Corporation Code that the same must be made in the AOI. Without a specific authority for the election or appointment of board officers directly by the stockholders themselves in its AOI, the general rule that they ought to be elected by the board of directors remains applicable to Ganco.

The election of Ganco's officers was clearly made by the stockholders sitting as its board of directors, and the meetings wherein such election took place were aptly directors' meetings subject to the rules governing directors' meetings.

The CA cannot thus be faulted for considering the meetings on November 6 and 12, 2017 as directors' meetings, as this conclusion is inevitable from the facts of this case.

However, the Court must point out that it cannot agree with the CA 's reliance on Article IV, Section 1 of Ganco's by-laws, which allows its stockholders "to appoint such officers as it may determine necessary or proper," in

justifying the validity of the election of Ganco's officers during the November 6 and 12 meetings. As earlier discussed, there is no similar provision in Ganco's AOI, where it must be indicated pursuant to Section 97 of the Old Corporation Code. While the CA's argument arrives at the same conclusion, that the elections of the officers are in fact valid, it is not consistent with its holding that the two meetings are directors' and not stockholders' meetings.

With this settled, the Court shall now discuss the applicable quorum requirement for such directors' meetings.

The CA correctly relied on Section 25 of the Old Corporation Code in determining the quorum for election of Ganco's officers

Section 52 of the Old Corporation Code provides that the quorum for stockholders' meetings shall "consist of the stockholders representing a majority of the outstanding capital stock."

Meanwhile, the quorum requirement for directors' meetings is set under Section 25 of the Old Corporation Code which provides that "a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute *a quo*rum for the transaction of corporate business." The same provision likewise provides that a corporation's AOI or by-laws may provide for a *greater majority.*

Section 25 also requires for decisions to be supported by, at least, the majority of the directors present at a meeting at which there is *a quo*rum, and it further sets the requirement for election of officers to "the vote of the majority of all members of the board."

As applied to Ganco, the default minimum quorum for stockholders' meetings shall be a majority of its outstanding capital stock represented or 2,801 out of 5,600, while the quorum for directors' meetings shall be the attendance of eight out of its 14 directors. For the validity of its corporate acts, it will only need the majority of five, should the meeting be only attended by a minimum of eight directors. However, the election of its officers shall require the vote of, at least, eight directors.

Section 97 of the Old Corporation Code provides that a close corporation can provide for "greater quorum or voting requirements in meetings of stockholders or directors" in its AOI.

As earlier discussed, Ganco's AOI not only provided that the corporation's business shall be managed by the board of directors who are its shareholders, but it likewise provided for a single quorum requirement for its meetings – *a majority of the outstanding capital stock.*

With the uniform quorum requirement, Ganco merely adopted what is provided in the Old Corporation Code with respect to stockholders' meetings – *a majority of the outstanding capital stock. however*, with respect to directors' meetings, Ganco's AOI and by-laws diverged from the Old Corporation Code when the quorum requirement was changed from the originally provided "majority of its board of directors" to "a majority of the outstanding capital stock."

Peter argues that in doing so, Ganco's AOI and by-laws simply provided for a *greater majority.*

The Court cannot agree.

It is a fundamental rule that a statute clear and unambiguous on its face need not be interpreted, but simply applied.[65] In *H. Villarica Pawnshop, Inc. v. Social Security Commission,*[66] the Court had occasion to reiterate this precept and emphasize its duty to uphold laws by applying their literal meaning when they are clear and suffer from no ambiguity.

> It is the duty of the Court to apply the law the way it is worded. Basic is the rule of statutory construction that when the law is clear and unambiguous, the court is left with no alternative but to apply the same according to its clear language. The courts can only pronounce what the law is and what the rights of the parties thereunder are. Fidelity to such a task precludes construction or interpretation, unless application is impossible or inadequate without it. Thus, it is only when the law is ambiguous or of doubtful meaning may the court interpret or construe its true intent.
>
> Parenthetically, the "plain meaning rule" or *verba legis* in statutory construction enjoins that if the statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation. This rule of interpretation is in deference to the plenary power of Congress to make, alter and repeal laws as this power is an embodiment of the People's sovereign will. Accordingly, when the words of a statute are clear and unambiguous, courts cannot deviate from the text of the law and resort to interpretation lest they end up betraying their solemn duty to uphold the law and worse, violating the constitutional principle of separation of powers.[67]

In this case, the Court must insist on a plain reading of the provisions of the Old Corporation Code as they apply to Ganco, given that the pertinent provisions are clear and unambiguous.

Section 25 sets the minimum requirement for *a quo*rum in directors' meetings and election of officers, and only provides for an exception when the AOIs/by-laws provide for a *greater majority* as provided in Section 97. The word *greater* is used as a comparative of the word *great* and is plainly understood as *more.*

Moreover, the word *greater* is used in conjunction with the word *majority,* which is clearly described in the Old Corporation Code. After the mention of the *greater majority* exception in Section 25, the Old Corporation Code clarified what is meant by the *majority,* by referring to the majority of the directors as fixed in the AOI. Considering the provision in its entirety, and in its plain meaning, the use of *greater majority* simply refers to more than a majority or more than 50% of the number of directors as fixed in the AOI, or 50% plus one.

Thus, the phrase *greater majority* can only mean more than the majority referred to. It depicts a quantitative and not a qualitative change.

Necessarily, while Section 97 allows close corporations, such as Ganco, to adopt a *greater majority* with respect to *a quo*rum for both stockholders' and directors' meetings, as well as voting requirements for certain acts, it does not authorize close corporations to altogether change what comprises such majority. Close corporations may increase the required majority for stocks represented for stockholders' meetings, or the required majority for directors' attendance and voting in directors' meetings, but they cannot change the very substance of what must comprise the quorum.

A close corporation can opt to set stockholders' meeting quorum to 2/3 of its outstanding capital stock, but it cannot arbitrarily set the quorum of its stockholders' meetings to a majority of its board of directors, even if it requires 100% attendance of its board directors. Conversely, a close corporation can opt to increase its quorum requirement for directors' meetings and election of its officers from a simple majority, to 2/3 or even 80% of its board of directors, but it cannot set the same to be a majority of its outstanding capital stock.

While the logical absurdity of such switching is readily apparent with respect to regular corporations, wherein there are separate stockholders and board directors, it easily gets effaced in the case of close corporations wherein there is a similarity if not outright identity of stockholders and board directors. However, the distinction must be maintained, as even though there may be identity of ownership and management in a close corporation, the exercise of powers pertaining to ownership and management remain different.

As Ganco's AOI and by-laws failed to specify a greater majority than what is provided in the Old Corporation Code, Section 25 thus remains applicable.

Therefore, the CA, in its contested Decision, was correct in disregarding the AOI and by-laws of Ganco, and in holding that the quorum for the directors' meetings must perforce adhere to Section 25 which provides for *a quo*rum of a majority of Ganco's board directors for the election of Ganco's officers.

> Notwithstanding the above provisions in the By-laws, Sec. 25 of the Corporation Code provides that the quorum for election of officers is not based on majority of the outstanding capital stock but majority of all the members of the board. **Directors cannot attend or vote by proxy at board meetings. In other words, with the death of Luz Marasigan, the remaining thirteen (13) stockholders who are also directors of GANCO may elect their officers based on a valid quorum of eight (8) stockholders/directors present in the meeting.**[68] (Emphasis supplied)

The meeting held on May 15, 2018 is not a stockholders' but a directors' meeting

Even as the same is not in issue, it is worthy of clarification that the CA incorrectly held that the meeting held on May 15, 2018, is a shareholders' meeting. Verily, Ganco's by-laws clearly states that "the annual meetings of stockholders shall be held at the principal office of the Corporation on May 15 of each year, or if a legal holiday, then on the following day."[69] Ostensibly, the meeting on May 15, 2018 thereby appears to be a stockholders' meeting.

However, a closer look at the agenda of the said meeting, as reflected in the Minutes, will indubitably show that the said meeting was actually a directors' meeting as its main purpose was the election of Ganco's board officers.[70] Therefore, the reasoning that the said meeting is invalid for failing to meet the quorum requirement of the majority of Ganco's outstanding capital stock, the quorum requirement for stockholders' meetings, is unavailing. Nonetheless, despite being a directors' meeting, the May 15, 2018 meeting was correctly held to be invalid, and as such the election of officers conducted during the said meeting cannot be recognized.

As it was a board meeting, the applicable quorum requirement is a majority of the number of directors. In this case, there was no proper notice, and in fact, Orlando, the Corporate Secretary, sent an email notice to all stockholders that the meeting cannot proceed pending the settlement of Luz's estate. Nonetheless, out of Ganco's

remaining 13 directors, nine directors were deemed present, which included eight directors and Cesar Augustine representing his late father, Cesar, Jr.

Of the nine present, Orlando, the Corporate Secretary, expressed his objection during the meeting and thereafter labeled the minutes of the said meeting as "Minutes of the Illegal GANCO Meeting." Further, Orlando, as well as Benito and Rommel, who were not present, registered their written objections on the conduct of the said meeting.[71]

Section 101 of the Old Corporation Code provides that actions in improperly held board meetings may be deemed valid if "[a]ll directors have actual or implied knowledge of the action and make no prompt objection thereto in writing." Thus, actions in an improperly held board meeting where directors seasonably registered their objections cannot be deemed valid.

Here, the CA found that Benito, Orlando, and Rommel filed written objections. Moreover, the Minutes of the May 15, 2018 meeting clearly recorded the Corporate Secretary's continuing objection on the conduct of the said meeting. While their objection partly hinges on the lack of quorum given the pendency of the settlement of Luz's estate, their objection likewise pointed out the conduct of the meeting despite the lack of due notice and the notice of cancellation issued by the Corporate Secretary.

It should likewise be noted that the elections conducted on May 15, 2018, failed to meet the voting requirement laid down under Section 25 of the Old Corporation Code, which provides that the "the election of officers [which] shall require the vote of a majority of all the members of the board." Among the attendees to the meeting was Cesar Augustine, who the RTC correctly held cannot validly represent his father, Cesar, Jr. There being only eight actual directors present, with one director, Orlando, questioning the validity of the meeting, it cannot be said that the elected officers were able to meet the prescribed threshold of eight votes, or a majority of Ganco's board of directors. By the same logic, it also cannot be said that there was *a quo*rum in the said meeting, considering that of the eight directors present, only seven were amenable to holding the meeting; thus, there was no majority of directors needed to transact business.

Based on the foregoing, even as the meeting held on May 15, 2018 was incorrectly tagged as a stockholders' meeting, the same was aptly declared as invalid.

A final word

The Court recognizes that the imposition of higher voting and quorum requirements is one of the means by which the veto power of the minority may be enhanced.[72] In such a case, the majority must hurdle a higher threshold in order to steer corporate policies and decisions. This is true for both close and widely-held corporations.

It may be particularly useful as a democratizing tool in widely-held corporations, but even in the context of close corporations, the imposition of more onerous voting and quorum requirements may facilitate cordiality and consensus building, which are critical for business operations run by families or closely-knit groups.

With such purpose in mind, the Court cannot allow a watering down of the quorum or voting requirements in the guise of an imposition of a greater majority, a real risk when the Court allows the modification from number of outstanding capital stock to board of directors, and vice versa.

As a final point of clarification, the fact that Ganco was organized as a close corporation to leverage the structure's unique characteristics for the management of the businesses of the Marasigan family is not lost on the Court.

It is conceded that Section 97 of the Old Corporation Code allows close corporations to completely do away with a board of directors entirely. In such a case, the AOI may simply state that the business of the corporation shall be managed by the stockholders directly, without so much of a mention that the stockholders shall be the corporation's board of directors.

In that scenario, while the stockholders may be deemed as the board of directors for the purposes of applying the provisions of the Corporation Code, the imposition of a single set of quorum requirements in the AOI and by-laws, only pertaining to stockholders' meetings and voting requirements, may very well be justified to achieve a true merger of ownership and management in a close corporation. However, here, Ganco decided to designate its stockholders as its board of directors.

Additionally, Section 97 also allows a close corporation's stockholders to directly elect or appoint corporate officers. However, instead of indicating the same in the AOI, the said provision only appears in Ganco's by-laws, contrary to the requirement in the Old Corporation Code.

Thus, based on a different set of facts, the result would have been different, and the Court would have supported the close corporation in its bid to maximize the advantages of its unique corporate form. But absent a

showing of such faithful compliance with the statutory requirements for the availment of such privileges, the Court must insist on the application of rules governing regular corporations.

Therefore, the CA, through its assailed Decision and Resolution, did not commit a reversible error to warrant the exercise of the Court's discretionary appellate jurisdiction.

In view of the foregoing discussions, there is no need for the Court to further delve on the other issue raised in the Petition.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The Decision, dated December 28, 2021, and the Resolution, dated May 24, 2022, of the Court of Appeals in CA-G.R. SP No. 168189 are **AFFIRMED**.

SO ORDERED.

Inting[**] and Gaerlan, JJ., concur.

Caguioa,[*] J., on leave.

Dimaampao,[***] J., on official travel.

Footnotes

[*] On leave.

[**] Acting Chairperson

[***] On official travel.

[1] *Rollo,* Vol. 1, pp. 13-52.

[2] *Id.* at 55-72. Penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Louis P. Acosta and Bonifacio S. Pascua.

[3] *Id.* at 8-9.

[4] *Id.* at 237-254. Penned by Presiding Judge Elma Rafallo-Lingan.

[5] Note that the RTC Decision misstates the date of the second meeting as November 17, 2017, instead of November 12, 2017. The CA in its Decision, dated December 28, 2021, noted this error on the part of the RTC.

[6] The defendants in the original Complaint for Declaration of Nullity of Meetings, Board Resolutions and Election of Officers, are Regina Marasigan-Palileo, Peter Paul G. Marasigan, Renato G. Marasigan, Gabriel G. Marasigan, Santiago G. Marasigan, Mauricio G. Marasigan, Maria Luz G. Marasigan, and Cesar Augustine C. Marasigan III.

[7] *Rollo,* Vol. 1, p. 238, RTC Decision.

[8] *Id.* at 353-359.

[9] *Id.* at 356.

[10] *Rollo,* Vol. 2, p. 969.

[11] *Rollo,* Vol. 1, p. 16, Petition.

[12] *Id.* at 16-17.

[13] *Id.* at 17.

[14] *Id.* at 17-18.

[15] *Id.* at 391, GANCO Minutes of Special Meeting (November 06, 2017).

[16] *Id.* at 396-405, GANCO Minutes of Special Meeting (November 12, 2017).

[17] *Id.* at 57-58, CA Decision.

[18] *Id.* at 468-470, Minutes of the Illegal GANCO Meeting (May 15, 2018).

[19] *Id.* at 58, CA Decision.

[20] *Id.* at 19, Petition.

[21] *Id.* at 58, CA Decision.

[22] *Id.* at 20, Petition.

[23] *Id.,* docketed as R-PSG-18-01223-CV.

[24] *Id.* at 246-247, RTC Decision.

[25] *Id.* at 237-254.

[26] *Id.* at 254.

[27] *Id.* at 55-72.

[28] *Id.* at 71.

[29] *Id.* at 64-65.

[30] *Id.* at 67-70.

[31] *Id.* at 70.

[32] *Id.* at 73-74.

[33] *Id.* at 74.

[34] Approved on May 1, 1980.

[35] *Rollo,* Vol. 1, 32-34, Petition

[36] *Id.* at 36.

[37] Approved on February 20, 2019.

[38] *Rollo,* Vol. 1, p. 41.

[39] *Id.* at 42.

[40] *Id.* at 44-48.

[41] Approved on May 1, 1980.

[42] 357 Phil. 631 (1998).

[43] *Id.* at 649-650.

[44] *Rollo,* Vol. 1, p. 356.

[45] 463 Phil. 846 (2003).

[46] *Id.* at 862.

[47] I JOSE CAMPOS, JR. & MARIA CLARA L. CAMPOS, THE CORPORATION CODE: COMMENTS, NOTES, AND SELECTED CASES, 10-11, (1990).

[48] CESAR L. VILLANUEVA & TERESA S. VILLANUEVA-TIANSAY, PHILIPPINE CORPORATE LAW, pp. 669-670, (2021).

[49] CAMPOS, JR. & CAMPOS, *supra,* at 12 and 344.

[50] *Id.* at 345-346.

[51] 292-A Phil. 167 (1993).

[52] *Id.* at 178.

[53] 530 Phil. 609 (2006).

[54] *Id.* at 619-620.

[55] *Rollo,* Vol. 1, p. 356.

[56] *Rollo,* Vol. 2, p. 969.

[57] *Rollo,* Vol. 1, p. 356.

[58] *Rollo,* Vol. 2, pp. 969-970.

[59] *Rollo,* Vol. 1, pp. 391 & 396.

[60] *Id.* at 391.

[61] *Id.* at 392-393.

[62] *Id.* at 393.

[63] *Id.* at 403-404.

[64] Article IV, Officers. Section 1. Election/Appointment. – The stockholders shall formally organize the Corporation by the election of the President, Vice-President, the Treasurer, and the Secretary at said meeting.

[65] See *s* 673 Phil. 177, 187 (2011).

[66] 824 Phil. 613 (2018).

[67] *Id.* at 628-629.

[68] *Rollo,* Vol. 1, p. 69, CA Decision.

[69] *Rollo,* Vol. 2, p. 969, by-laws of Ganco.

[70] *Rollo,* Vol. 1, p. 468, Minutes of the Ganco Illegal Meeting.

[71] *Id.* at 70, CA Decision.

[72] See CAMPOS, JR. & CAMPOS, *supra* note 47, at 632 and VILLANUEVA & VILLANUEVA-TIANSAY, *supra* note 48, at 878.

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Today is Wednesday, March 18, 2026

REPUBLIC OF THE PHILIPPINES
Supreme Court
Manila

EN BANC

[G.R. No. 269745, January 14, 2025]

GEORGE REBUJIO, PETITIONER, VS. DIO IMPLANT PHILIPPINES CORPORATION, REPRESENTED BY RONALDO CANDIDO S. KALAW, RESPONDENT.

D E C I S I O N

LAZARO-JAVIER, *J.:*

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the following dispositions of the Court of Appeals in CA-G.R. SP No. 159880, *viz*.:

1) Decision[2] dated February 16, 2023, reinstating the Decision[3] dated July 26, 2018 of Branch 17, Metropolitan Trial Court, Manila in Criminal Case No. M-MNL-17-03684-CR holding petitioner George Rebujio (Rebujio) civilly liable to pay respondent Dio Implant Philippines Corporation (DIPC) the value of the dishonored check subject of the case; and

2) Resolution[4] dated October 3, 2023, denying Rebujio's Motion for Reconsideration.

Antecedents

Rebujio was charged with violation of Batas Pambansa Bilang 22,[5] *viz*.:

> That sometime prior August 10, 2016, did then and there willfully, unlawfully[,] and knowingly make or draw and issue to DIO IMPLANT PHILIPPINES CORPORATION, represented by Ronaldo Candido S. Kalaw[,] to apply for value on account or for value SECURITY BANK postdated check No. 0000072006 dated September 7, 2016 payable to Dio Implant Phils. Corp. in the amount of P[HP] 279,051.86, said accused well knowing that at the time of issued [sic], him [sic] did not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check after having been deposited in the City of Manila, Philippines, and upon being presented for payment within ninety (90) days from the date thereof was subsequently dishonored by the drawee bank for the reason "DAIF" and despite receipt of notice of such dishonor, said accused failed to pay said DIO IMPLANT PHILIPPINES CORPORATION the amount of the check or to make arrangement for full payment of the same within five (5) banking days after receiving said notice.
>
> Contrary to law.[6]

On arraignment, Rebujio pleaded not guilty to the crime charged. Trial on the merits ensued thereafter.[7]

Version of the Prosecution

In August 2015, Beverly Hills Medical Group, Inc. (BHMGI), through its in-house dentist Dr. Maria Theresa Mendoza (Dr. Mendoza), purchased from DIPC various merchandise for dental and cosmetic surgery amounting to PHP 299,728.00 and PHP 236,874.00, respectively. DIPC, through its sales officer Michael R. Reyllo (Reyllo), received from BHMGI Security Bank Check No. 0000072006 with a face value of PHP 297,051.86 (subject check), drawn on BHMGI's account and signed by Rebujio as the company finance officer and authorized signatory to its

checking account. But when presented for payment at Metrobank Ocean Tower Branch, the subject check bounced for having been drawn against insufficient funds.[8]

Reyllo informed BHMGI, through its accountant Christine Millares (Millares), of the fact of dishonor. In response, Millares invited Reyllo to meet with Rebujio and his wife (spouses Rebujio) at their office. Spouses Rebujio requested for time to review the documents presented by DIPC and eventually, acknowledged the outstanding obligation of the company. Thereafter, Reyllo never heard from spouses Rebujio. They also failed to settle the obligation despite demands. DIPC thus filed a complaint for violation of Batas Pambansa Bilang 22 against Rebujio.[9]

Version of the Defense

Rebujio, then the finance officer of BHMGI, testified that the subject check was wrongfully issued. He countered that DIPC was not a supplier of BHMGI and that the dental supplies delivered were purchased by Dr. Mendoza in her personal capacity. Dr. Mendoza is a former consultant of BHMGI who also worked as a dentist for Rebujio. As such, she was not authorized to engage the services of or to transact business with DIPC on behalf of BHMGI per the company manual.[10] BHMGI admonished Dr. Mendoza for her inappropriate conduct.[11]

Ruling of the Metropolitan Trial Court

By Decision[12] dated July 26, 2018, the Metropolitan Trial Court acquitted Rebujio on reasonable doubt but held him civilly liable to pay the value of the subject check, *viz*.:

> **WHEREFORE,** premises considered, for failure of the prosecution to prove the guilt of the accused George Rebujio y Dizon beyond reasonable doubt, the Court hereby **ACQUITS** him of the crime charged.
>
> **However,** the prosecution having established the civil liability of the accused by preponderance of evidence, [the] accused is hereby directed to pay the private complainant the value of the subject check which is Two Hundred Ninety-Seven Thousand Fifty-One Pesos and 86/100 (Php297,051.86) with legal interest at the rate of 6% *per annum* starting from the filing of the Information until the amount is fully paid and to pay the cost of suits.
>
> **SO ORDERED.**[13] (Emphasis in the original)

It found that the prosecution failed to prove all the elements of the crime charged. Albeit it was proved that the subject check was issued for valuable consideration, *i.e.*, as payment for the sale of merchandise for dental and cosmetic surgery, it was not shown that Rebujio actually received the notice of dishonor, which was merely received by his secretary.[14]

Nonetheless, Rebujio was held liable for the value of the subject check since Batas Pambansa Bilang 22 itself and existing jurisprudence fused criminal liability with the corresponding civil liability by allowing the complainant to recover such amount from the person who signed the check.[15]

Ruling of the Regional Trial Court

By Decision[16] dated November 22, 2018, Branch 32, Regional Trial Court, Manila in Criminal Case No. M-MNL-17-0368CR-R00-00 reversed. It held that as a corporate officer of BHMGI, Rebujio may only be held civilly liable for the value of the check if he were found criminally liable, which was not the case here. The judgment was rendered without prejudice to the right of DIPC to institute a separate civil action against BHMGI for recovery of the value of the subject check.

The Regional Trial Court denied reconsideration under Order[17] dated February 6, 2019.

Ruling of the Court of Appeals

By Decision[18] dated February 16, 2023, the Court of Appeals reversed the Regional Trial Court Decision and reinstated the ruling of the Metropolitan Trial Court, to wit:

> **WHEREFORE,** the petition is **GRANTED**. The Decision dated November 22, 2018 and Order dated February 6, 2019 of the Regional Trial Court, Branch 32, Manila, in CRIMINAL CASE NO. M-MNL-17-0368CR-R00-00, are **SET ASIDE**.
>
> Accordingly, the Decision dated July 26, 2018 of the Metropolitan Trial Court, Branch 17, Manila, in Crim. Case No. M-MNL-17-03684-CR, directing respondent George Rebujio to pay the private complainant the value of the subject check which is Two Hundred Ninety-Seven Thousand Fifty-One

> Pesos and 86/100 (Php297,051.86) with legal interest at the rate of 6% *per annum* starting from the filing of the Information until the amount is fully paid and to pay cost of suits, is hereby **REINSTATED**.
>
> **SO ORDERED**.[19] (Emphasis in the original)

The Court of Appeals held that a finance officer is not among those considered as corporate officers since this position is not found in BHMGI's by-laws nor in the Corporation Code. Even then, the Metropolitan Trial Court correctly held Rebujio liable to pay the amount of the subject check, especially since he admitted that he was the one who issued and signed the same. It is well-settled that an acquittal based on reasonable doubt does not preclude the award of civil damages.[20]

Under Resolution[21] dated October 3, 2023, the Court of Appeals denied reconsideration.

The Present Petition

Rebujio now seeks affirmative relief from the Court and prays that the assailed disposition of the Court of Appeals be reversed and a new one rendered, reinstating the Regional Trial Court Decision dated November 22, 2018.[22]

Citing *Pilipinas Shell Petroleum Corporation v. Duque,*[23] Rebujio argues that a corporate officer may be held civilly liable in a Batas Pambansa Bilang 22 case only if they were convicted of the crime charged.[24] More, the Court of Appeals' ruling that a finance officer is not considered a corporate officer because it is not one of the positions enumerated under Section 25 of the Corporation Code is contrary to the Court's ruling in *Pilipinas Shell*. In that case, respondents, Carlos Duque (Carlos) and Teresa Duque (Teresa), were the proprietor and corporate secretary, respectively, of the company. Though a proprietor is not one of the positions listed under Section 25 of the Corporation Code, the Court nonetheless absolved Carlos from paying the value of the dishonored checks in *Pilipinas Shell.*[25]

Rebujio submits that the term "corporate officer" as used in jurisprudence vis-à-vis Batas Pambansa Bilang 22 cases should be broadly interpreted to cover any authorized signatory to the corporation's checks. To construe otherwise would lead to an inequitable situation where higher-ranked corporate officers would be absolved from liability but lower-ranked officers would be found liable for the corporate obligation.[26]

In its Comment,[27] DIPC ripostes that the Court of Appeals correctly found Rebujio civilly liable for the value of the dishonored check because the civil action which is deemed instituted with the Batas Pambansa Bilang 22 case here does not strictly pertain to a corporate obligation, but to Rebujio's direct civil liability arising from: (1) his admitted negligence in issuing the unfunded check and his decision not to fund the same; and (2) his admissions as well as the allegations and evidence on record which warrant the piercing of the veil of corporate fiction. DIPC asserts that Rebujio cannot hide behind the veil of corporate fiction because he signed the subject check as a result of his managerial role and is merely invoking the same to evade liability.

In any case, DIPC avers that the amount covered by the subject check does not pertain to a corporate debt but to Dr. Mendoza's personal obligation. More, it maintains that Rebujio is not a corporate officer under Section 25 of the Corporate Code who may be exonerated from civil liability in Batas Pambansa Bilang 22 cases upon acquittal. His position as finance officer is not listed in BHMGI's by-laws nor was it created by the corporation's board of directors. Rebujio's insistence on a broader interpretation of the term "corporate officers" has no legal basis and would allegedly only open the floodgates to fraud.

Issue

May Rebujio, as finance officer of BHMGI, be made liable to pay the value of the subject dishonored check albeit, he was acquitted of violation of Batas Pambansa Bilang 22 on reasonable doubt?

Our Ruling

The Petition is meritorious.

Notably, the issue at hand is not a novel one. For the liability of a person who, on behalf of a corporation, issues or draws a worthless check in violation of Batas Pambansa Bilang 22 is categorically provided under Section 1 thereof, which states:

> **Section 1.** *Checks without sufficient funds.* – Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but

not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court.

. . . .

Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act. (Emphasis supplied)

Thus, *Navarra v. People*,[28] reiterating *Gosiaco v. Ching*,[29] settled the rule that the officer who signed the worthless check on behalf of the corporation may be held personally liable for violation of Batas Pambansa Bilang 22, and, when so convicted, he or she may also be held civilly liable for the value of the dishonored check, *viz*.:

When a corporate officer issues a worthless check in the corporate name, he may be held personally liable for violating a penal statute. The statute imposes criminal penalties on anyone who draws or issues a check on any bank with knowledge that the funds are not sufficient in such bank to meet the check upon presentment. Moreover, the corporate officer cannot shield himself from liability on the ground that it was a corporate act and not his personal act. *The general rule is that a corporate officer who issues a bouncing corporate check can be held civilly liable when he is convicted.* The criminal liability of the person who issued the bouncing checks in behalf of a corporation stands independent of the civil liability of the corporation itself, such civil liability arising from the Civil Code. *But BP 22 itself fused this criminal liability with the corresponding civil liability of the corporation itself by allowing the complainant to recover such civil liability, not from the corporation, but from the person who signed the check in its behalf.*[30] (Emphasis supplied, citation omitted)

Conversely, when the corporate officer is acquitted of violation of Batas Pambansa Bilang 22, he or she is discharged from any civil liability arising from the issuance of the dishonored corporate check. *Pilipinas Shell,*[31] which Rebujio aptly cited, dictates:

As held above, it is clear that the civil liability of the corporate officer for the issuance of a bouncing corporate check attaches only if he [or she] is convicted. Conversely, therefore, *it will follow that once acquitted of the offense of violating BP 22, a corporate officer is discharged from any civil liability arising from the issuance of the worthless check in the name of the corporation he [or she] represents.* This is without regard as to whether his [or her] acquittal was based on reasonable doubt or that there was a pronouncement by the trial court that the act or omission from which the civil liability might arise did not exist.[32] (Emphasis supplied, citations omitted)

Here, the facts are undisputed. The subject check was issued as payment for BHMGI's obligation to DIPC, albeit purportedly by mistake. It was drawn on BHMGI' s account, hence, it was a corporate check signed and issued by Rebujio, not in his personal capacity, but as finance officer and the authorized signatory of the corporation. As it was, the check got dishonored when presented to the bank for having been drawn against insufficient funds. Despite demands, BHMGI failed to settle its obligation. This notwithstanding, the Metropolitan Trial Court acquitted Rebujio of the offense charged on reasonable doubt.

Verily, the extinguishment of the criminal liability of Rebujio, in his capacity as the corporate officer who issued the check on behalf of BHMGI, concomitantly extinguished as well his civil liability to pay the value of the subject checks per the doctrine in *Pilipinas Shell*. But the Court of Appeals, in ordaining otherwise, drew a distinction as regards who are considered corporate officers under this doctrine, referencing Section 25 of the Corporation Code, now Section 24 of the Revised Corporation Code, which reads:

SEC. 24. *Corporate Officers.* – Immediately after their election, the directors of a corporation must formally organize and elect: (a) a president, who must be a director; (b) a treasurer, who must be a resident; (c) a secretary, who must be a citizen and resident of the Philippines; and (d) such other officers as may be provided in the bylaws. If the corporation is vested with public interest, the board shall also elect a compliance officer. The same person may hold two (2) or more positions concurrently, except that no one shall act as president and secretary or as president and treasurer at the same time, unless otherwise allowed in this Code.

The officers shall manage the corporation and perform such duties as may be provided in the bylaws and/or as resolved by the board of directors.

Interpreting this provision, it has thus been held that corporate officers are those given that character by the Revised Corporation Code, *i.e.*, the president, vice-president, secretary, and treasurer, and compliance officer, or by the corporation's by-laws, *i.e.*, those whose positions were created under the corporation's charter or by-laws and elected by the directors or stockholders.[33] Following this definition, the Court of Appeals concluded that Rebujio, as finance officer, is not a corporate officer since his position was not enumerated under the law nor provided by BHMGI's by-laws.

The Court now reckons with this novel question: does the rule on corporate officers who issued bouncing corporate checks in violation of BP 22 pertain only to corporate officers as defined under the Revised Corporation Code?

We rule in the negative.

First. It is erroneous to apply the Revised Corporation Code definition of corporate officers when the case clearly involves a different law, *i.e.*, Batas Pambansa Bilang 22, which itself categorically describes who are considered "corporate officers" in the context of bouncing corporate checks. To recall, the basis of the doctrine absolving acquitted corporate officers of any civil liability arising from an alleged violation of Batas Pambansa Bilang 22 is Section 1 thereof, which states, "[w]here the check is drawn by a corporation, company or entity, *the person or persons who actually signed the check in behalf of such drawer* shall be liable under this Act."

This provision prescinds from the reality that a corporation can only act through its officers. Hence, its wording is unequivocal and mandatory—that the person who actually signed the corporate check shall be held liable for a violation of Batas Pambansa Bilang 22. This provision does not contain any condition, qualification or limitation.[34]

Clearly, therefore, when Batas Pambansa Bilang 22 cases, e.g., *Gosiaco, Navarra,* and *Pilipinas Shell*, speak of "corporate officers," such term is understood to pertain to "the person or persons who actually signed" the corporate check who may or may not necessarily be the same persons considered as corporate officers under the Revised Corporation Code, as long as they are the ones who actually signed and issued the dishonored check on behalf of the corporation. Indeed, we find no reason to invoke here the definition of corporate officers under the Revised Corporation Code precisely because this is a Batas Pambansa Bilang 22 case, and violation of Batas Pambansa Bilang 22 is <u>*not*</u> a crime defined or penalized by the Revised Corporation Code.

As astutely pointed out by Rebujio, in *Pilipinas Shell*, respondent Carlos was the proprietor of Fitness Consultants, Inc. (FCI). He, along with Teresa, the corporate secretary, signed and issued the subject check on behalf of FCI, which subsequently got dishonored. Notably, while a corporate secretary is identified as a corporate officer under the Corporation Code, a proprietor is not. Nor was it ever mentioned that such position was considered a corporate office under FCI's by-laws. Yet, the Court in *Pilipinas Shell* nonetheless applied the doctrine involving corporate officers under Batas Pambansa Bilang 22 equally to Carlos and Teresa in ordaining that they were not civilly liable for the value of the dishonored check due to their acquittal from the criminal charge against them.

Similarly, in *Navarra,* the petitioner therein was the chief finance officer of Reynolds Philippines Corporation. The position of chief finance officer is likewise not included in the enumeration under the Corporation Code nor was it shown to have been a corporate office created under the corporation's by-laws. Yet, the Court nonetheless invoked the corporate officer doctrine under Batas Pambansa Bilang 22 in determining Navarra's civil liability.

Had Batas Pambansa Bilang 22 truly intended to hold liable—and conversely, absolve—only a specific set of officers like the "corporate officers" as defined by the Revised Corporation Code, it could have expressly so indicated; yet, it did not. *Ubi lex non distinguit, nec nos distinguere debemus.* Where the law does not distinguish, the courts should not distinguish.[35] Instead, Batas Pambansa Bilang 22 clearly holds liable *"the person or persons who actually signed"* the corporate check, sans any qualifications. Verily, when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application.[36]

Second. Holding the acquitted corporate signatory, who is not a corporate officer as defined by the Revised Corporation Code, liable for the obligation of the corporation violates the doctrine of separate juridical personality, which provides that a corporation has a legal personality separate and distinct from that of people comprising it. Thus, being an officer or a stockholder of a corporation does not make one's property the property also of the corporation nor the corporate debt the debt of the stockholders or officers.[37] This doctrine, of course, becomes relevant only where the corporate officer/signatory was acquitted of violating Batas Pambansa Bilang 22.

For, if such officer/signatory were convicted, civil liability *ex delicto* naturally arises. Civil liability *ex delicto* is the liability sought to be recovered in a civil action deemed instituted with the criminal case.[38] In Batas Pambansa Bilang 22 cases, the law itself fused criminal liability with the corresponding civil liability of the corporation by allowing the complainant to recover such civil liability, not from the corporation, but from the person who signed the check in its behalf. The remedy left for such officer/signatory then is to seek reimbursement for the amount paid from the corporation which actually incurred the obligation.[39]

But, where the officer/signatory is acquitted, his or her civil liability *ex delicto* is automatically extinguished. Consequently, any civil liability that survives the acquittal of the accused arises from a different source of obligation, such as civil liability *ex contractu, as here,* and must be imputed to the party that factually owes it.[40]

To recall, the subject check here was issued by BHMGI as payment for the purchase of dental and cosmetic merchandise from DIPC. Though it is unclear whether the transaction may validly be imputed against BHMGI, as it claims that Dr. Mendoza purchased the items in her personal capacity, what is clear from the facts is that Rebujio was not the one who incurred the obligation. Neither was it alleged nor shown that he bound himself to personally

pay for the same or that he used the veil of corporate fiction for fraudulent purposes. Verily, there is no basis to hold him liable for the obligation for which the subject check was issued.

All told, Rebujio, being a mere signatory of BHMGI, is not civilly liable to pay the value of the subject corporate check in view of his acquittal from the criminal charge against him, without prejudice to the right of DIPC to institute a separate civil action for the recovery of the amount owed to it.

ACCORDINGLY, the Petition is **GRANTED**. The Decision dated February 16, 2023 and Resolution dated October 3, 2023 of the Court of Appeals in CA-G.R. SP No. 159880 are **REVERSED**. The Decision dated November 22, 2018 and Order dated February 6, 2019 of Branch 32, Regional Trial Court, Manila in Criminal Case No. M-MNL-17-0368CR-R00-00 are **REINSTATED**.

SO ORDERED.

Gesmundo, C.J., Leonen, SAJ., Hernando, Inting, Zalameda, M. Lopez, Gaerlan, Rosario, J. Lopez, Dimaampao, Marquez, and Kho, Jr., JJ., concur.
Caguioa,[*] J., on official leave but left a vote.
Singh,[**] J., on leave.

Footnotes

[*] On official business but left a vote.

[**] On leave.

[1] *Rollo,* pp. 13–27.

[2] *Id.* at 33–44. Penned by Associate Justice Florencio M. Mamauag, Jr. and concurred in by Associate Justices Victoria Isabel A. Paredes and Mary Charlene V. Hernandez-Azura of the Thirteenth Division of the Court of Appeals, Manila.

[3] *Id.* at 48–58. Penned by Acting Presiding Judge Amalia S. Gumapos-Ricablanca.

[4] *Id.* at 46–47. Penned by Associate Justice Florencio M. Mamauag, Jr. and concurred in by Associate Justices Victoria Isabel A. Paredes and Mary Charlene V. Hernandez-Azura of the Former Thirteenth Division of the Court of Appeals, Manila.

[5] *Id.* at 33.

[6] *Id.* at 33–34.

[7] *Id.* at 48.

[8] *Id.* at 34.

[9] *Id.*

[10] *Id.*

[11] *Id.* at 35.

[12] *Id.* at 48–58.

[13] *Id.* at 58.

[14] *Id.* at 51–54.

[15] *Id.* at 57–58.

[16] *Id.* at 59–66. Penned by Presiding Judge Thelma Bunyi-Medina of Branch 32, Regional Trial Court, Manila.

[17] *Id.* at 67–68. Penned by Presiding Judge Thelma Bunyi-Medina.

[18] *Id.* at 33–44.

[19] *Id.* at 43.

[20] *Id.* at 40–43.

[21] *Id.* at 46–47.

[22] *Id.* at 26.

[23] 805 Phil. 954 (2017) [Per J. Peralta, Second Division].

[24] *Id.* at 962–963.

[25] *Rollo,* pp. 23–24.

[26] *Id.* at 25–26.

[27] *Id.* at 74–107.

[28] 786 Phil. 439 (2016) [Per J. Peralta, Third Division].

[29] 603 Phil. 457, 464–465 (2009) [Per J. Tinga, Second Division].

[30] 786 Phil. 439, 449 (2016) [Per J. Peralta, Third Division].

[31] 805 Phil. 954 (2017) [Per J. Peralta, Second Division].

[32] *Id.* at 962.

[33] See *Wesleyan University-Philippines v. Maglaya*, 803 Phil. 722, 737 (2017) [Per J. Peralta, Second Division].

[34] *Mitra v. People*, 637 Phil. 645, 652 (2010) [Per J. Mendoza, Second Division].

[35] *Villanueva v. People,* 876 Phil. 855, 865 (2020) [Per J. Delos Santos, Second Division].

[36] *Dubongco v. Commission on Audit*, 848 Phil. 367, 378 (2019) [Per J. Reyes, J. Jr., En Banc].

[37] See *Bustos v. Millians Shoe, Inc., et al.,* 809 Phil. 226, 234 (2017) [Per C.J. Sereno, First Division].

[38] *Dy v. People,* 792 Phil. 672, 681 (2016) [Per J. Jardeleza, Third Division].

[39] See *Navarra v. People*, 786 Phil. 439 (2016) [Per J. Peralta, Third Division].

[40] See *De Leon v. Roqson Industrial Sales*, 916 Phil. 272 (2021) [Per J. Caguioa, First Division].

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REPUBLIC OF THE PHILIPPINES
Supreme Court
Manila

THIRD DIVISION

[G.R. No. 277015, February 17, 2025]

ALVIN CLARK Y. TENG, PETITIONER, VS. PEARLY Y. TENG, ALBERT Y. TENG, PAUL T. TENG, AND CHERYL ANN T. HAO, AS MEMBERS OF THE BOARD OF DIRECTORS OF MABUHAY EDUCATIONAL CENTER, INC., RESPONDENTS.

D E C I S I O N

INTING, *J.:*

This resolves the Petition for Review (Under Rule 45, Rules of Court)[1] filed by Alvin Clark Y. Teng (Alvin) assailing the Decision[2] dated February 26, 2024, and the Resolution[3] dated October 21, 2024, of the Court of Appeals (CA) in CA-G.R. SP No. 175036, with prayer for issuance of Permanent Injunction (PI). The CA dismissed Alvin's petition for review under Rule 42 of the Rules of Court and affirmed in toto the Decision[4] dated August 15, 2022, of Branch 93, Regional Trial Court (RTC), Quezon City in Civil Case No. R-QZN-18-04068-CV.

The Antecedents

The case stemmed from an action involving an intra-corporate dispute with claims for damages and prayer for the issuance of a Temporary Restraining Order (TRO) and preliminary injunction (PI) filed by Alvin on April 13, 2018, seeking to enjoin Pearly Y. Teng (Pearly), Albert Y. Teng (Albert), Paul T. Teng (Paul), Cheryl Ann T. Hao (Cheryl) (collectively, respondents) from (i) terminating the business operations of Mabuhay Educational Center, Inc. (MECI); (ii) further conducting any board meeting; and (iii) from selling MECI's property located at No. 3 Agno Street, Barangay Doña Josefa, Quezon City (subject property).[5] The subject property consisted of a 1,400-square-meter (sq.m.) lot with an eight-story building.[6]

Alvin alleged as follows: (1) from 2002 to 2017, he was part of MECI's Board of Directors (BOD), served as its corporate secretary, and managed its daily operations; (2) on December 20, 2017, respondents held a stockholders' meeting and elected themselves as officers/members of MECI's BOD; (3) respondents only elected four directors despite his act of nominating his mother Elena Y. Teng (Elena) to be one of the directors and contrary to Article 1 of MECI's By-Laws which states that MECI's BOD should be comprised of five directors; (4) in the same stockholders' meeting, Paul, Cheryl, and Pearly, were respectively elected as the president, corporate secretary, and treasurer of MECI's BOD; (5) subsequently, respondents held another meeting to remove Alvin as the signatory to MECI's bank account; (6) on April 11, 2018, Alvin received a notice dated April 2, 2018, from Cheryl regarding the stockholders' meeting scheduled on April 16, 2018, or less than the 10-day notice required by MECI's By-laws; (7) one of the items indicated in the notice was MECI's closure and the sale of the subject property, which came as a surprise to Alvin, taking into consideration the substantial income from MECI's business operations and the absence of imminent reason for its closure.[7]

Alvin's allegations of fraudulent schemes on the part of respondents were anchored on the following grounds: (1) respondents surreptitiously removed him as corporate secretary; (2) respondents gradually terminated MECI's business operations in preparation for its closure and sale of its assets; and (3) respondents negotiated in bad faith with him relative to the distribution of MECI's income and assets.[8] In support of his prayer for TRO and PI, he alleged that the material and substantial invasion of his rights would result in grave and irreparable damage on his part.[9]

Respondents refuted Alvin's allegations that he was unjustly removed as corporate secretary and as the authorized signatory of MECI's bank account. They further countered that all the involved parties were engaged in discussions and exchanges of proposals relative to their lack of interest in continuing MECI's business operations and their plan to liquidate its assets for pro-rata distribution in accordance with their respective shareholdings.[10]

For their counterstatement of facts, respondents posited, among other things, that (1) MECI was a family corporation founded by Custodios J. Teng (Custodios), Sofronio J. Teng (Sofronio), and Patricio J. Teng (Patricio); (2) Custodios, Sofronio and Patricio, each owned 30% of MECI's shares, while they and Alvin each owned 2%; (3) on August 17, 2017, when Custodios was 83 years old and sickly, Alvin invited Paul, Pearly, and Cheryl, to an informal meeting where he unilaterally declared himself as the president and chief executive officer of MECI, removed them from their positions as account managers and finance manager, and ordered Cheryl to pre-sign several checks in blank to be drawn from MECI's China Bank Account; (4) they temporarily agreed to Alvin's demands to ensure the continuation of MECI and the satisfaction of its obligations to its employees, contractors, and clients; (5) on October 8, 2017, or one month after Custodios' death, Alvin offered to buy their shares as well as Sofronio and Patricio's shareholdings; (6) Alvin also offered to buy the subject property at the price of PHP 20,000.00 per sq.m., payable over 11 to 15 years without interest; (7) Sofronio, Patricio, and respondents rejected Alvin's offers as grossly inadequate considering that the current market value of the lot alone was estimated at PHP 140,000.00 per sq.m.; (8) on December 20, 2017, a special stockholders' and organizational meeting was called and held to elect new directors and officers; (9) in January 2018, Paul asked Alvin to turn over all documents, papers, and records pertaining to MECI's operations, finances, and assets, but Alvin denied having them in his possession; and (10) Alvin asked Albert, his brother, to sign an Affidavit of Waiver of Rights which Albert tore up in disgust.[11]

Thereafter, Alvin failed to attend the meetings set by respondents on January 12 and 17, 2018, and on March 1, 2018, which were held to appoint Sofronio as a director of MECI. On March 2, 2018, Alvin filed a General Information Sheet (GIS) with the Securities and Exchange Commission to reflect the purported transfer of shares made by Sofronio and Patricio in favor of Custodios on March 10, 2017, through a Deed of Assignment supposedly notarized by Atty. Michael Darwin M. Bayotas (Atty. Bayotas). Upon verification with the Office of the Clerk of Court of the RTC Quezon City, respondents discovered that the notarization on the purported Deed of Assignment was spurious considering that in Doc. No. 131, Page 28, Book No. VII, series of 2017, Atty. Bayotas' notarial register referred to a Memorandum of Agreement, not the purported Deed of Assignment. Thus, Cheryl filed another GIS on March 5, 2018, to reflect their actual shareholdings based on the December 20, 2017, special stockholders' meeting and organizational meeting and the March 1, 2018, special stockholders' meeting. On March 8, 2018, Sofronio and Patricio signed a Joint Affidavit denying the alleged transfer of their respective 30% shares to Custodios. On April 16, 2018, an annual stockholders' meeting was held where respondents and Sofronio were re-elected as directors.[12]

The Ruling of the RTC

In the Decision[13] dated August 15, 2022, the RTC dismissed both Alvin's action and respondents' counterclaim. The dispositive portion reads:

> WHEREFORE, in view of the foregoing, the case is hereby **DISMISSED** for lack of merit.
>
> The counterclaim of the defendants is likewise **DISMISSED**.
>
> SO ORDERED.[14]

The RTC found that Alvin's factual allegations did not support his claims of fraudulent schemes by respondents. According to the RTC, mere allegations of a sudden plan to close the company and Alvin's expulsion from MECI's BOD are not considered ultimate facts but mere assertions that these were in violation of the law.[15] Assuming arguendo that the Complaint is sufficient in form and substance, the RTC held that the evidence presented by Alvin failed to prove his allegations of fraud.[16] The RTC declared:

First, Alvin waived his right to question the validity of the December 20, 2017, special stockholders' and organizational meeting based on his own admission that he participated in the actions taken during that meeting.[17]

Second, MECI's By-Laws do not prohibit the election of fewer than five directors.[18]

Third, Alvin's receipt of the notice of the April 16, 2018, annual stockholders' meeting less than 10 days prior cannot be considered a fraudulent scheme because the Corporation Code and MECI's By-Laws only address the mailing or sending of the notice, not the stockholder's receipt of it.[19]

Fourth, respondents had the discretion to reject Alvin's offers, a matter outside the court's purview.[20]

Finally, the Corporation Code permits the closure of a corporation and the sale of its assets provided the sale is approved by a majority vote of the BOD and ratified in a meeting by the stockholders representing at least 2/3 of the outstanding capital stock. Under the business judgment rule, questions of policy and management are solely within

the discretion of a corporation's officers and directors; thus, the court lacks the authority to substitute its judgment for that of the BOD.[21]

Unconvinced, Alvin filed a petition for review with the CA.

The Ruling of the CA

In the assailed Decision, the CA affirmed the RTC's decision *in toto*. It agreed with the RTC's findings that Alvin failed to adduce clear and convincing evidence to support his allegations of fraud[22] and that he is estopped from questioning the validity of the December 20, 2017, special stockholders' and organizational meetings, notwithstanding the lack of a prior written notice, given his active participation in the actions taken at the meeting, including nominating his mother for a director position.[23]

The CA further ruled that the December 20, 2017 stockholders' and organizational meetings constituted an *ultra vires* act. Thus, the meeting was not void, but merely voidable, and was effectively ratified by the subsequent holding of the March 1, 2018, special board meeting, during which, the vacancy was filled by appointing Sofronio as the fifth director.[24]

Finally, the CA ruled that the elections of respondents and Sofronio as directors, the appointment of respondents as officers, respondents' decision not to cast votes in Alvin's favor resulting in his failure to secure a position, and respondents' decision to cease MECI's business operations, were all valid acts, the legality of which are rooted on the inherent powers vested upon them by the Corporation Code. Finding the main case to be without merit, the CA consequently denied Alvin's prayer for a permanent injunction.[25]

Still unconvinced, Alvin moved for the reconsideration of the assailed Decision, but the CA denied his motion in the Resolution[26] dated October 21, 2024.

Hence, the instant Petition.

Alvin's Arguments

Alvin maintains that fraud was evident in the power grab that occurred on December 20, 2017, which was purportedly a family gathering that suddenly became a special stockholders' meeting, resulting in the election of respondents. He emphasizes that it was established that no notices were sent to the stockholders notifying them of the meeting or its supposed agenda.[27] According to Alvin, the CA erred in applying Section 50[28] of the Corporation Code given that MECI's By-Laws[29] expressly state that waiver of such notice may be made only in writing.[30]

Alvin further argues that the CA erred in ruling that the special stockholders' and organizational meetings that occurred on December 20, 2017, was ratified on March 1, 2018, considering that the latter was a special board meeting, not a stockholders' meeting. He contends that decisions made by stockholders at a stockholders' meeting can only be ratified by the stockholders themselves at a subsequent meeting.[31]

Finally, Alvin maintains that the dissolution of MECI or its cessation of business should have been preceded by: (1) a majority vote of the board of directors; (2) a resolution duly adopted by the affirmative vote of stockholders owning at least two-thirds of the outstanding capital stock; and (3) publication of the notice of the time, place, and object of the meeting for three consecutive weeks, pursuant to Section 118[32] of the Corporation Code. Thus, Alvin concludes that he is entitled to a writ of injunction because he did not receive notice of the dissolution, or even a courtesy call.[33]

The Issues

1. Whether the CA erred in ruling that the December 20, 2017, special stockholders' and organizational meeting was ratified at the March 1, 2018 special board meeting.

2. Whether the CA erred in ruling that Alvin's allegations of fraud were not supported by clear and convincing evidence; and

3. Whether the CA erred in denying Alvin's prayer for a permanent injunction.

The Ruling of the Court

Preliminarily, the Court notes that the inter-corporate case was filed on April 13, 2018. Therefore, the governing law in the case is Batas Pambansa Bilang 68,[34] otherwise known as the Corporation Code of the Philippines (Old Corporation Code).

After a careful review, the Court resolves to deny the Petition for lack of merit.

Here, Alvin accuses respondents of employing fraudulent schemes that resulted in grave and irreparable damage to him. It is settled law, however, that fraud is never presumed and must be established by clear and convincing evidence.[35] "Fraud refers to all kinds of deception—whether through insidious machination, manipulation, concealment or misrepresentation—that would lead an ordinarily prudent person into error after taking the circumstances into account."[36]

As aptly ruled by the courts below, Alvin's allegations of fraud against respondents were not supported by the required factual allegations. The actions allegedly committed by respondents, even if true, do not constitute fraud. The removal of a director or a corporate officer, the cessation of operations, and the sale of corporate property, are all permitted under the Corporation Code, provided the statutory voting requirements are met. As for the election of Cheryl as corporate secretary in place of Alvin, this action by respondents does not constitute a fraudulent scheme because Article III of MECI's By-laws expressly states that the corporate secretary "shall serve at the pleasure of the board of directors."[37] Consequently, Alvin's removal as corporate secretary by respondents, acting as MECI's BOD, was in accordance with MECI's By-laws.

It is also worth noting that respondents, together with Sofronio and Patricio who voted in their favor, owns 68% of MECI's shares, while Alvin owns only 2%. The Court finds that respondents had no motive to employ fraudulent schemes to elect themselves as directors and officers of MECI, considering that Alvin's 2% shares were minuscule compared to the total shares held by the remaining stockholders, who voted respondents as directors MECI.

Furthermore, only five individuals were nominated during the December 20, 2017, special stockholders' and organization meeting: the four respondents and Elena, who was nominated by Alvin. Notably, Alvin did not even nominate himself.[38] Thus, the Court cannot ascribe bad faith, much less fraud, on respondents simply because Alvin was not re-elected as director. More, Elena was not qualified to be elected as director under Section 23[39] of the Old Corporation Code because she was not a stockholder.[40] Thus, the election of just four directors at that meeting was justified. Finally, the RTC correctly ruled that MECI's By-laws do not prohibit the election of fewer than five directors.

Anent the CA's ruling that the December 20, 2017, stockholders' and organizational meeting was subsequently ratified at the March 1, 2018, board meeting, Alvin correctly points out that MECI's BOD could not ratify their election in a board meeting, as the power to elect members of the BOD belongs to the stockholders under Section 24[41] of the Old Corporation Code. Regardless, any defect in respondents' election as directors, and subsequently, as officers of MECI, has been rendered moot by the holding of MECI's annual stockholders' meeting on April 16, 2018, where respondents and Sofronio were re-elected as directors of MECI.

Further, Alvin's action to nullify the December 20, 2017, stockholders' and organizational meeting constitutes an election contest and is therefore subject to the 15-day prescriptive period under Rule 6, Section 3[42] of the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799.[43] Consequently, Alvin is barred from questioning the election of respondents as directors and officers of MECI on December 20, 2017, as his action was filed only on April 13, 2018-well beyond the 15-day period provided by the rules. Thus, the lack of prior notice of meeting is of no moment, as Alvin's action to contest respondents' election was already time-barred.

Finally, Alvin's reliance on Section 118 of the Corporation Code demonstrates his fundamental misunderstanding as to the legal distinction between *dissolution* of a corporation and *cessation of business operations.*

Corporate dissolution, on the one hand, terminates the corporation's juridical personality.[44] The closure or cessation of business operations, on the other hand, refers to the complete or partial cessation of the operations and/or shutdown of the establishment, carried out either to prevent financial ruin or to promote the business interest of the entity.[45] The mere cessation of business operations does not equate to corporate dissolution; an entity can stop doing business and yet retain its legal personality until it is dissolved according to law. The cessation of business operations is a management decision that falls under the purview of the board of directors, pursuant to Section 23,[46] paragraph 1 of the Old Corporation Code, unless otherwise provided in the articles of incorporation or the by-laws. Corporate dissolution, however, requires the affirmative vote of stockholders owning at least two-thirds of the outstanding capital stock and must strictly adhere to the requirements set forth in Title XIV of the Old Corporation Code.

Before the Court can rule on respondents' alleged non-compliance with Section 118 of the Old Corporation Code, Alvin must first prove that respondents actually dissolved MECI's corporate existence. A thorough examination of the record[47] demonstrates that Alvin has not adduced sufficient evidence to prove the alleged dissolution. Instead, the records reveal that respondents merely ceased MECI's operations on September 30, 2018, as a consequence of the intra-corporate controversy between the parties.[48] As directors of MECI, respondents had the discretion to terminate its operations, even without the stockholders' approval, given that neither the Old Corporation Code nor MECI's By-Laws requires stockholders' approval for the cessation of its business operations.

From the foregoing, the courts *a quo* aptly denied Alvin's prayer for a writ of injunction, as the decision regarding the cessation of MECI's operations falls within the business judgment of MECI's BOD given the circumstances.[49]

In *Ong Yong v. Tiu,*[50] the Court ruled that it could not intervene or order corporate structural changes not voluntarily agreed upon by its stockholders and directors:

> [I]t is an improper judicial intrusion into the internal affairs of the corporation to compel FLADC to file at the SEC a petition for the issuance of a certificate of decrease of stock. Decreasing a corporation's authorized capital stock is an amendment of the Articles of Incorporation. It is a decision that only the stockholders and the directors can make, considering that they are the contracting parties thereto. In this case, the Tius are actually not just asking for a review of the legality and fairness of a corporate decision. They want this Court to make a corporate decision for FLADC. We decline to intervene and order corporate structural changes not voluntarily agreed upon by its stockholders and directors.
>
> Truth to tell, a judicial order to decrease capital stock without the assent of FLADC's directors and stockholders is a violation of the "business judgment rule" which states that:
>
> > . . . (C)ontracts intra vires entered into by the board of directors are binding upon the corporation and courts will not interfere unless such contracts are so unconscionable and oppressive as to amount to wanton destruction to the rights of the minority, as when plaintiffs aver that the defendants (members of the board), have concluded a transaction among themselves as will result in serious injury to the plaintiffs stockholders.
>
> The reason behind the rule is aptly explained by Dean Cesar L. Villanueva, an esteemed author in corporate law, thus:
>
> > Courts and other tribunals are wont to override the business judgment of the board mainly because, courts are not in the business of business, and the laissez *faire* rule or the free enterprise system prevailing in our social and economic set-up dictates that it is better for the State and its organs to leave business to the businessmen; especially so, when courts are ill-equipped to make business decisions. More importantly, the social contract in the corporate family to decide the course of the corporate business has been vested in the board and not with courts.[51] (Citations omitted)

Similarly, the Court cannot compel respondents in the case to resume MECI's business operations or enjoin them from selling the subject property. The Court has even stronger grounds for not enjoining respondents from holding further board meetings as this power is inherent in their role as MECI's BOD.

In fine, the Court finds no reversible error on the part of the CA in dismissing Alvin's petition for review and affirming the RTC's decision, which, in turn, dismissed Alvin's intra-corporate action. Accordingly, his prayer for a permanent writ of injunction is also denied.

WHEREFORE, the Petition for Review is **DENIED**. The Decision dated February 26, 2024, and Resolution dated October 21, 2024, of the Court Appeals in CA-G.R. SP No. 175036 are **AFFIRMED**. Consequently, the application for issuance of permanent injunction is **DENIED**.

SO ORDERED.

Caguioa (Chairperson), Gaerlan, and Dimaampao, JJ., concur.
Singh,[*] *J., on leave.*

Footnotes

[*] On leave.

[1] *Rollo,* pp. 11-26.

[2] *Id.* at 32-57. Penned by Associate Justice Alfredo D. Ampuan and concurred in by Associate Justices Zenaida T. Galapate-Laguilles and Eleuterio L. Bathan of the Thirteenth Division, Court of Appeals, Manila.

[3] *Id.* at 29-30. Penned by Associate Justice Eleuterio L. Bathan and concurred in by Associate Justices Zenaida T. Galapate-Laguilles and Marie Christine Azcarraga Jacob of the Special Former Thirteenth Division, Court of Appeals, Manila.

[4] *Id.* at 58-76. Penned by Acting Presiding Judge Evangeline C. Cabochan-Santos.

[5] *Id.* at 33.

[6] *Id.* at 35.

[7] *Id.* at 33-34.

[8] *Id.* at 69.

[9] *Id.* at 34.

[10] *Id.*

[11] *Id.* at 34-35.

[12] *Id.* at 35-37.

[13] *Id.* at 58-76. Penned by Acting Presiding Judge Evangeline C. Cabochan-Santos.

[14] *Id.* at 76.

[15] *Id.* at 67.

[16] *Id.* at 68.

[17] *Id.* at 70.

[18] *Id.* at 71.

[19] *Id.* at 72.

[20] *Id.* at 73-74.

[21] *Id.*

[22] *Id.* at 44-45.

[23] *Id.* at 47-49.

[24] *Id.* at 51-52.

[25] *Id.* at 56-57.

[26] *Id.* at 29-30.

[27] *Id.* at 18-19.

[28] Section 50. Regular and special meetings of stockholders or members. - . . . .

> Special meetings of stockholders or members shall be held at any time deemed necessary or as provided in the by-laws: *Provided,* however, That at least one (1) week written notice shall be sent to all stockholders or members, unless otherwise provided in the by-laws.
>
> Notice of any meeting may be waived, expressly or impliedly, by any stockholder or member. . . .

[29] *Rollo,* p. 80.

> ARTICLE III - STOCKHOLDERS' MEETING
>
> . . . .
>
> 6. NOTICE – WRITTEN NOTICE OF THE ANNUAL AND SPECIAL MEETINGS OF THE STOCKHOLDERS SHALL BE SEN[T] TO EACH REGISTERED STOCKHOLDER AT LEASE TEN (10) DAYS PRIOR TO THE DATE OF SUCH MEETING, WAIVER OF SUCH NOTICE MAY BE MADE ONLY IN WRITING.

[30] *Id.* at 20.

[31] *Id.* at 21-22.

[32] Section 118. Voluntary dissolution where no creditors are affected. - If dissolution of a corporation does not prejudice the rights of any creditor having a claim against it, the dissolution may be effected by majority vote of the board of directors or trustees, and by a resolution duly adopted by the affirmative vote of the stockholders owning at least two-thirds (2/3) of the outstanding capital stock or of at least two-thirds (2/3) of the members of a meeting to be held upon call of the directors or trustees after publication of the notice of time, place and object of the meeting for three (3) consecutive weeks in a newspaper published in the place where the principal office of said corporation is located; and if no newspaper is published in such place, then in a newspaper of general circulation in the Philippines, after sending such notice to each stockholder or member either by registered mail or by personal delivery at least thirty (30) days prior to said meeting. A copy of the resolution authorizing the dissolution shall be certified by a majority of the board of directors or trustees and countersigned by the secretary of the corporation. The Securities and Exchange Commission shall thereupon issue the certificate of dissolution.

[33] *Rollo,* pp. 23-24.

[34] Approved on May 1, 1980.

[35] *Maestrado v. Court of Appeals*, 384 Phil. 418, 435 (2000).

[36] *Solidbank Corporation v. Mindanao Ferroalloy Corporation,* 502 Phil. 651, 669 (2005).

[37] *Rollo,* p. 80.

[38] *Id.* at 72.

[39] Section 23. The board of directors or trustees. - . . . .

> Every director must own at least one (1) share of the capital stock of the corporation of which he is a director, which share shall stand in his name on the books of the corporation. Any director who ceases to be the owner of at least one (1) share of the capital stock of the corporation of which he is a director shall thereby cease to be a director. Trustees of non-stock corporations must be members thereof. A majority of the directors or trustees of all corporations organized under this Code must be residents of the Philippines.
>
> . . . .

[40] *Rollo,* p. 72.

[41] Section 24. Election of directors or trustees. - At all elections of directors or trustees, there must be present, either in person or by representative authorized to act by written proxy, the owners of a majority of the outstanding capital stock, or if there be no capital stock, a majority of the members entitled to vote. The election must be by ballot if requested by any voting stockholder or member. In stock corporations, every stockholder entitled to vote shall have the right to vote in person or by proxy the number of shares of stock standing, at the time fixed in the by-laws, in his own name on the stock books of the corporation, or where the by-laws are silent, at the time of the election; and said stockholder may vote such number of shares for as many persons as there are directors to be elected or he may cumulate said shares and give one candidate as many votes as the number of directors to be elected multiplied by the number of his shares shall equal, or he may distribute them on the same principle among as many candidates as he shall see fit: *Provided,* That the total number of votes cast by him shall not exceed the number of shares owned by him as shown in the books of the corporation multiplied by the whole number of directors to be elected: *Provided,* however, That no delinquent stock shall be voted. Unless otherwise provided in the articles of incorporation or in the by-laws, members of corporations which have no capital stock may cast as many votes as there are trustees to be elected but may not cast more than one vote for one candidate. Candidates receiving the highest number of votes shall be declared elected. Any meeting of the stockholders or members called for an election may adjourn from day to day or from time to time but not sine die or indefinitely if, for any reason, no election is held, or if there are not present or represented by proxy, at the meeting, the owners of a majority of the outstanding capital stock, or if there be no capital stock, a majority of the members entitled to vote.

[42] SEC. 3. Complaint. - In addition to the requirements in section 4, Rule 2 of these Rules, the complaint in an election contest must state the following:

> The case was filed within fifteen (15) days from the date of the election if the by-laws of the corporation do not provide for a procedure for resolution of the controversy, or within fifteen (15) days from the resolution of the controversy by the corporation as provided in its by-laws[.]

[43] A.M. No. 01-2-04-SC, approved on March 13, 2001.

[44] *Dr. Rich v. Paloma*, 827 Phil. 398, 408 (2018).

[45] *Manila Polo Club Employees' Union (MPCEU) FUR-TUCP v. Manila Polo Club, Inc.*, 715 Phil. 18, 25 (2013).

[46] Section 23. The board of directors or trustees. – Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified.

[47] *Rollo,* p. 62.

[48] *Id.* at 73.

[49] The RTC found that because of Alvin's assertion of becoming the majority shareholder before China Bank, the latter froze MECI's bank account and as a result, respondents encountered problems with the flow of funds. *Id.*

[50] 448 Phil. 860 (2003).

[51] *Id.* at 890-891.

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Today is Wednesday, March 18, 2026

G.R. No. 200070-71, December 7, 2021,
♦ *Decision, Inting, [J]*
♦ *Concurring Opinion, Perlas-Bernabe, [J]*
♦ *Separate Concurring Opinion, Leonen, [J]*
♦ *Concurring Opinion, Caguioa, [J]*
♦ *Concurring Opinion, Lazaro-Javier, [J]*

REPUBLIC OF THE PHILIPPINES
Supreme Court
Manila

EN BANC

[G.R. Nos. 200070-71. December 07, 2021]

TOTAL OFFICE PRODUCTS AND SERVICES (TOPROS), INC., PETITIONER, VS. JOHN CHARLES CHANG, JR., TOPGOLD PHILIPPINES, INC., GOLDEN EXIM TRADING AND COMMERCIAL CORPORATION, AND IDENTIC INTERNATIONAL CORP., REPRESENTED BY JOHN CHARLES CHANG, JR., HECTOR AND CECILIA KATIGBAK, RESPONDENTS.

D E C I S I O N

INTING, *J.:*

A person cannot serve two masters without detriment to one of them.[1] It is from this basic human frailty that the *"doctrine of corporate opportunity"* was recognized and laws were put in place to deter corporate officers from using their position of trust and confidence to further private interests.

Before the Court is a Petition for Review on *Certiorari*[2] praying for the reversal of the Decision[3] dated June 17, 2011 and the Resolution[4] dated January 2, 2012 of the Court of Appeals (CA) in CA-G.R. SP Nos. 103047 and 103119. The CA reversed and set aside the Decision[5] dated March 18, 2008 of Branch 158, Regional Trial Court (RTC), Pasig City in Civil Case No. 68327, and denied the Motion for Reconsideration[6] filed by Total Office Products and Services, Inc. (TOPROS), respectively.

The Antecedents

On November 17, 1998, TOPROS filed before the Securities and Exchange Commission (SEC) a Petition for Injunction, Mandatory Injunction and Damages (With Urgent Motion for Issuance of Writ of Preliminary Attachment),[7] which was later refiled as an Amended Petition for Accounting and Damages with Prayer for the Issuance of a Writ of Preliminary Attachment[8] (Amended Petition) against TOPGOLD Philippines, Inc. (TOPGOLD), Golden Exim Trading and Commercial Corporation (Golden Exim), Identic International Corp. (Identic) (collectively, respondent-corporations), John Charles Chang, Jr. (Chang), Saul Mari Chang, Hector Katigbak (Hector), Cecilia Katigbak (Cecilia), Rosario Sarah Fernando, and Elizabeth Jay (Elizabeth) (collectively, individual respondents), who are all incorporators of the respondent-corporations.[9]

With the passage of Republic Act No. (RA) 8799 or the Securities Regulation Code, which took effect on August 8, 2000, the Amended Petition was transferred from the SEC to the RTC.[10]

According to the Amended Petition, Spouses Ramon (Ramon) and Yaona Ang Ty (Yaona) (collectively, Spouses Ty) wanted to establish a corporation during the latter part of 1982 that would be the sole distributor of Minolta plain paper copiers in the Philippines. Chang, a former employee of Pantrade, Inc., (Pantrade), a company also owned by the Ty Family, was given the duty to manage the new corporation. The Ty Family gave Chang 10% shares in the corporation with the assurance from Chang that he will render competent, exclusive, and loyal service thereto. On

January 31, 1983, TOPROS was incorporated with an authorized capital stock of P4,000,000.00. Among the incorporators, Chang was the only one who is not a member of the Ty Family.[11]

The Ty Family elected Chang as President and General Manager and entrusted to him the management as well as the funds of TOPROS. Meanwhile Yaona served as Treasurer and Jennifer Ty (Jennifer) stood as Corporate Secretary. Upon Chang's request, Elizabeth, Hector, and Cecilia, all employees of Pantrade, were transferred to TOPROS.[12]

TOPROS grew into a multi-million enterprise; thus, Spouses Ty increased its authorized capital stock to P10,000,000.00 and Chang's share to 20%. TOFROS included in its line of business the distribution of various office equipment and supplies utilizing the brand names Ultimax, Maruzen, Taros, and Intimus.[13]

However, despite its success, no substantial cash dividends were distributed to the stockholders because, according to Chang, the corporation was investing its funds in several real properties in Metro Manila, Visayas, and Mindanao.[14]

In 1998, the Ty Family sensed irregularities in Chang's dealings when their friends and relatives began questioning the manner in which products and services from TOPROS were issued receipts and vouchers from TOPGOLD, Golden Exim, and Identic. The Ty Family requested Chang to return all corporate records of TOPROS. Chang, however, offered to buy them out of their interest at TOPROS. This prompted the Ty Family to conduct an investigation which revealed that while still a Corporate Director and an officer of TOPROS, Chang, together with the individual respondents, incorporated the respondent-corporations to siphon the assets, funds, goodwill, equipment, and resources of TOPROS. According to TOPROS, Chang used its properties in organizing the respondent-corporations and obtained opportunities properly belonging to it and its stockholders to their damage and prejudice. Chang was, thereafter, ousted as Corporate Director and officer of TOPROS; and the instant case was filed against him.[15]

Meanwhile, TOPROS sought an *ex parte* issuance of a writ of preliminary attachment against the respondent-corporations and individual respondents (collectively, respondents) and prayed for: (1) an accounting for all the profits and the refund of the same to TOPROS; (2) the dissolution of the respondent-corporations; (3) the declaration as illegal and fraudulent all the transfers and acquisitions made by Chang in his favor and that of the other respondents; (4) respondents to reconvey to TOPROS the properties which they fraudulently registered in their individual and corporate names; and (5) payment of damages.[16]

The SEC issued a Writ of Preliminary Attachment in favor of TOPROS wherein the latter posted a bond in the amount of P90,000,000.00 representing its alleged damage.[17]

For his part, Chang denied the charges and asserted that from TOPROS' inception until his ouster as President and General Manager therein, he alone ran TOPROS and shouldered its liabilities. He further asserted that: (1) even with the absence of assistance from the Ty Family, they received an estimated P14,000,000.00 cash dividends spread throughout the 15 years of his incumbency in the corporation; (2) he was able to save TOPROS from the economic crisis in 1983 through personal loans and surety agreements with Chinabank; (3) he registered the trade name and logo of the corporation and was able to develop its goodwill all over the country; (4) he promoted the only Filipino brand of office machine, "Ultimax" and eventually patented it under the name of TOPROS, even though he was the one who coined its name; and (5) it was during the time that he was signing as surety for the loans of TOPROS that he, together with the individual respondents, formed the respondent-corporations.[18]

Chang furthermore alleged that the Ty Family knew that he organized the three corporations during his incumbency as President and General Manager of TOPROS. In 1993, Golden Exim and Identic were exhibitors, together with TOPROS, in the Philippine Office Machine Distributors Association (POMDA), wherein Ramon was a director while his son, Warren Ty (Warren), was a member of the Exhibit Committee. Golden Exim, Identic, together with TOPROS, and Pantrade marketed the product "Green-C Chlorella." In the minutes of the special meeting of Identic in April 1989, Warren signed as a stockholder. Then in April 1989, Warren acquired the shares of Edwin Tan in Identic through a Deed of Assignment.[19]

Chang also explained that: (1) from June 1997 to March 1998, he opened several letters of credit for TOPROS through trust receipt arrangements with Chinabank and before the trust receipts fell due, he took up the matter of repayment with Spouses Ty; (2) Ramon, however, passed the matter to him and told Chang that if repayment was not possible, considering that TOPROS was already heavily in debt, Chang should just let the corporation go bankrupt; (3) he personally guaranteed TOPROS' loans, and, because of his fear of being charged with *estafa*, he was compelled to seek other sources to pay off TOPROS' indebtedness; (4) when the patriarch, Ramon, was no longer interested in rehabilitating TOPROS and Chang wanted to protect his credibility and the welfare of 200 employees who were about to lose jobs, he took it upon himself to serve the clients of TOPROS through TOPGOLD which individual respondents incorporated in 1997; and (5) he alone was able to pay TOPROS' loans including the payment of separation pay of its employees.[20]

In their Answer *Ad Cautelam*[21] dated September 3, 1999, individual respondents, excluding Chang, questioned the jurisdiction of the SEC. They alleged that the case is purely intra-corporate between Chang and TOPROS of which they are not stockholders. They also averred that the SEC has no jurisdiction to order the dissolution of Golden Exim, Identic, and TOPGOLD as there must be a separate proceeding for such purpose.[22]

TOPROS presented, as witnesses, Yaona and Jennifer while respondents presented Chang, Hector, Sheriff Eduardo Grueso, and Manuel Peralta.[23]

The RTC Decision

In its Decision[24] dated March 18, 2008, the RTC ruled:

> **WHEREFORE**, premises considered, judgment is hereby rendered in favor of plaintiff Total Office Products and Services (Topros), Inc. and against defendants John Charles Chang, Jr., Topgold Phils., Inc., Golden Exim Trading & [Commercial Corporation] and Identic International Corporation who are hereby ordered, jointly and solidarily, to:
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> 1. Account for all the profits and properties which otherwise should have accrued to Topros and refund the same to Topros;
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> 2. Pay actual damages suffered by Topros in an amount to be determined by the Court upon submission by the Court-appointed Accounting Committee of its Final Report;
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> 3. Pay One Hundred Thousand Pesos (P100,000.00) in exemplary damages to Topros;
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> 4. Pay One Hundred Thousand Pesos (P100,000.00) as and by way of attorney's fees to Topros; [and]
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> 5. Pay the costs of suit.
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> To carry this judgment into effect, a three-man Accounting Committee is hereby ordered formed with the Branch of [sic] Clerk of Court, Atty. Romeo Bautista IV, as Chairman, and two other certified public accountants respectively nominated by the parties, as members.
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> This Accounting Committee shall undertake the accounting necessary to determine the amount of actual damages suffered by Topros, the extent of loss of its business opportunities, the extent of gain profited by Chang and the three defendant corporations to the detriment of Topros, the refund of properties registered in the name of the three corporations which property pertains to Topros, and such other matters relevant to the judgment for accounting of all profits and properties properly accruing to Topros. It shall also include in its review the effects of the previously enforced Writ of Preliminary Attachment.
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> Accordingly, the parties are hereby directed to submit to the Court, within fifteen (15) days from receipt hereof, at least two (2) nominees each of certified public accountants from which the Court shall appoint the other two (2) members of the Accounting Committee.
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> Meanwhile, let the Petition be dismissed insofar as defendants Saul Mari Chang, Hector Katigbak, Cecilia Katigbak, Rosario Sarah Fernando and Elizabeth Jay are concerned.
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> **SO ORDERED.**[25]

The RTC held that the case filed by TOPROS is an intra-corporate controversy between TOPROS and Chang. However, because of allegations of fraudulent utilization and siphoning of resources, opportunities, and contracts belonging to TOPROS by Chang, together with the individual respondents and the respondent-corporations, respondents are indispensable parties to the case who must be joined as party defendants.[26]

The RTC also ruled that Chang violated his fiduciary duties and was guilty of disloyalty to TOPROS for which he must be held accountable under Sections 31 and 34 of The Corporation Code of the Philippines (Corporation Code).[27] Chang established Identic, Golden Exim, and TOPGOLD which are in the same line of business of TOPROS while still an officer and director thereof. He acquired business opportunities which should have belonged to TOPROS.[28]

Chang and the other respondents filed their separate petitions for review which were consolidated and resolved by the CA.[29]

The CA Decision

In its Decision[30] dated June 17, 2011, the CA ruled:

> **WHEREFORE**, the Petitions for Review in CA-G.R. SP No. 103047 and in CA-G.R. SP No. 103119 are **GRANTED**. The assailed RTC Decision dated 18 March 2011 in Civil Case No. 68327 is **REVERSED** and **SET ASIDE**, and accordingly, the Amended Petition is **DISMISSED**.
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> Consequently, the writ of attachment and all notices of garnishment issued relative thereto are hereby dissolved.
>
> **SO ORDERED.**[31]

According to the CA, records do not show that TOPROS even attempted to adduce evidence that Chang and individual respondents have complete control over TOPGOLD, Golden Exim, and Identic as all TOPROS did was to show that Chang and the other individual respondents were incorporators and/or officers of the respondent-corporations and that Chang substantially owned them. It ruled that given that Yaona, Jennifer, and Warren were the Corporate Treasurer, Secretary, and Chairman, respectively, of the Board of Directors of TOPROS, it could not see how Chang could have complete dominion over TOPROS' funds. It further held that TOPROS' mere allegation that Chang and the other individual respondents fraudulently siphoned off its funds and assets based mainly, if not solely, on the latter's establishment of the respondent-corporations does not amount to clear and convincing evidence sufficient to support allegations of fraud. Thus, the RTC had no justifiable reason to pierce the veil of corporate fiction.[32]

The CA furthermore held that there were only mere innuendos of disloyalty. Ramon, the patriarch of the Ty Family with whom Chang directly dealt with, was not presented by TOPROS as a witness. Yaona's statements, which were derived from pronouncements of her husband, Ramon, were mere hearsay and of no probative value. The RTC's finding that Chang was guilty of disloyalty because of his subsequent acquisition of the service contract previously entered into by TOPROS and Linde Refrigeration Phils., Inc. (Linde) failed to consider that during that period, TOPROS was either closing down or had already closed down. This was also the scenario with regard to the similar advertisements of TOPROS and TOPGOLD considering that TOPROS did not refute that TOPGOLD started using the advertisements only in 1997.[33]

TOPROS filed a Motion for Reconsideration, but the CA denied it on January 2, 2012.[34]

Hence, the petition.

> TOPROS is now before the Court asserting that:
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> I. The [CA] committed grave abuse of discretion amounting to lack or excess of jurisdiction when: it found petitioner TOPROS['] allegation of disloyalty against respondent Chang lacking; and it did not hold respondent Chang liable for disloyalty as a director to petitioner TOPROS; and
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> II. The [CA] committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that any similarity in the names of petitioner TOPROS and respondent Topgold cannot be considered as indicia of fraud or of disloyalty in this case.[35]

Petitioner asserts that: (1) Chang is guilty of violating the Corporation Code particularly Section 31, as he brazenly disregarded the director's duty of loyalty; (2) he established the respondent-corporations to acquire and utilize the assets, funds, properties, and resources of TOPROS; and (3) he also violated Section 74 of the Corporation Code in failing to provide the other directors access to the financial records of TOPROS.[36]

According to TOPROS, Chang's acts amounted to violation of the "doctrine of corporate opportunity" which rests on the unfairness, in particular circumstances, of an officer or director taking advantage of an opportunity for his own personal profit when the interest of the corporation calls for protection. If, in such circumstances the interests of the corporation are betrayed, the corporation may elect to claim all the benefits of the transaction for itself and the law will impress a trust in favor of the corporation upon the property interest and profits acquired.[37]

In his Comment,[38] Chang avers that: (1) the doctrine of corporate opportunity does not apply in the case because he was advised to allow the corporation to go under due to its indebtedness; (2) the doctrine of corporate opportunity applies only if the corporation is financially able to undertake its business; (3) TOPROS failed to prove the claim of fraud by preponderance of evidence of fraud; (4) TOPROS' witnesses admitted that Chang and Ramon had always been in close coordination in handling the affairs of TOPROS, while members of the family formed part of the new businesses alleged to be part of the scheme to defraud TOPROS; and (5) when Ramon advised Chang that they were no longer interested to pursue the business and was willing to just have the business go under, TOPROS' witnesses admitted that Chang was in constant communication with Ramon.[39]

Respondent-corporations in their Comment[40] also allege that: (1) their incorporations were with the knowledge, approval, and participation of the Ty Family; (2) there was also no evidence that respondents were "dummies" of Chang; neither was there evidence, such as account books, vouchers, checks, etc., to support the allegation that vast amounts of TOPROS's resources were channeled to, and received by the respondent-corporations; and (3)

there is no confusion between the names TOPROS and TOPGOLD. "TOPGOLD" is merely a descriptive name while "TOPROS" is an acronym that stands for Total Office Products and Services.[41]

The Issue

Whether Chang is liable for violation of his fiduciary duties under the Corporation Code.

Batas Pambansa Blg. (BP) 68 or the Corporation Code was enacted in 1980. In 2019, RA 11232, otherwise known as the "Revised Corporation Code of the Philippines" (RCC), was passed and repealed BP 68.[42] As the acts complained of took place under BP 68, the Court shall refer to the provisions under BP 68.

Our Ruling

The Court finds merit in the petition.

Generally, Rule 45 petitions can raise only questions of law, as this Court is not the proper venue to consider factual issues. However, a departure from the general rule may be warranted where, as in the case, the findings of the CA are contrary to those of the trial court.[43]

Here, the CA had different factual findings from the RTC which necessitates the Court's review of the evidence presented by the parties. After a judicious review of the documentary and testimonial evidence presented, the Court finds that a reversal of the CA ruling is warranted.

Doctrine of Corporate Opportunity

The doctrine of corporate opportunity traces its roots to the general principles on directors' and officers' liabilities.

As a rule, a corporation is a juridical entity that is vested with a legal personality separate and distinct from those acting in its behalf, and in general, from the people comprising it. Following this principle, obligations incurred by the corporation, acting through its directors, officers and employees are the corporation's sole liabilities. A corporate director, trustee, or officer is generally not held personally liable for obligations that are incurred by the corporation. This legal fiction, however, may be disregarded—through the piercing of the corporate veil—if, *inter alia,* it is used as a means to perpetrate fraud or an illegal act, or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, or to confuse legitimate issues.[44]

Section 31 of the Corporation Code (now Section 30 of the RCC) specifies the liabilities of directors, trustees, or officers. It reads:

> Sec. 31. *Liability of directors, trustees or officers.* — Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or *acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.*
>
> *When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.* (Italics supplied.)

Section 34 of the Corporation Code (now Section 33 of the RCC) also states:

> Sec. 34. *Disloyalty of a director.* — Where a director, by virtue of his office, *acquires for himself a business opportunity which should belong to the corporation, thereby obtaining profits to the prejudice of such corporation,* he must account to the latter for all such profits by refunding the same, unless his act has been ratified by a vote of the stockholders owning or representing at least two-thirds (2/3) of the outstanding capital stock. This provision shall be applicable, notwithstanding the fact that the director risked his own funds in the venture. (Italics supplied.)

Legislative History

Through Associate Justice Samuel H. Gaerlan, the Court is reminded of and finds it useful to look at the deliberations of BP 68 or the Corporation Code wherein then Minister Estelito Mendoza highlighted the intent of introducing Sections 31 to 34 to ensure that directors or corporate officers fulfill their fiduciary duties to the corporation.

> MR. MENDOZA. x x x x

> x x x [T]his provision — Section 31 — is really no more than a consequence of the requirement that the position of membership in the Board of Directors is a position of high responsibility and great trust. Unless a provision such as this is included, then that requirement of responsibility and trust will not be as meaningful as it should be. For after all, directors may take the attitude that unless they themselves commit the act, they would not be liable. But the responsibility of a director is not merely to act properly. The responsibility of a director is to assure that the Board of Directors, which means his colleagues acting together, does not act in a manner that is unlawful or to the prejudice of the corporation because of personal or pecuniary interest of the directors.[45] (Emphasis omitted.)

Evidently, the intent of the framers of Section 31 of the Corporation Code was to codify the duty of loyalty of directors and corporate officers that is *to inform and offer to the corporation business opportunities* which, by reason of their office, they acquire or *become aware of.* Only when the corporation, after having been offered the business opportunities, and rejects them, that a director can take advantage thereof.

A look at the legislative records would further reveal the intent of the legislators to make a director or corporate officer liable to account for any profits derived from business opportunities which should have belonged to the corporation, unless his acts were ratified in accordance with Section 34 of the Corporation Code.

> MR. NUÑEZ. x x x
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> May I go now to x x x Section 34.
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> x x x x
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> My question, Your Honor, is: is this not the so-called corporate opportunity doctrine found in the American jurisprudence?
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> MR. MENDOZA. Yes, Mr. Speaker, as I stated many of the changes that have been incorporated in the Code were drawn from jurisprudence on the matter, but even jurisprudence on several matters or several issues relating to the Corporation Code are sometimes ambiguous, sometimes controversial. In order, therefore, to clarify those issues, what was done was to spell out in statutory language the rule that should be applied on those matters and one of such examples is Section 34.
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> x x x x
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> MR. MENDOZA. In my opinion it must not only be made known to the corporation; the corporation must e formally advised and if he really would like to be assured that he is protected against the consequences provided for in Section 34, he should take steps whereby the opportunity is clearly presented to the corporation and the corporation has the opportunity to decide on whether to avail of it or not and then let the corporation reject it, after which then he may avail of it. x x x.
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> x x x [N]ow with the statutory rule, any director who comes to know of an opportunity that may be available to the corporation would be aware of the consequences in case he avails of that opportunity without giving the corporation the privilege of deciding beforehand on whether to take advantage of it or not.
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> x x x x
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> x x x [A] prudent director, who would assure that he does not become liable under Section 34, should not only be sure that the corporation has official knowledge, that is, the Board of Directors, but must take steps, positive steps, which will demonstrate that the matter or opportunity was brought before the corporation for its decision whether to avail of it or not, and the corporation rejected it.
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> So, under those circumstances narrated by Your Honor, it is my view that the director will be liable, unless his acts are ratified later by the vote of stockholders holding at least 2/3 of the outstanding capital stock.
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> The purpose of all these provisions is to assure that directors or corporations constantly — not only constantly remember but actually are imposed with certain positive obligations that at least would assure that they will discharge their responsibilities with utmost fidelity.[46] (Emphasis and underscoring omitted.)

Philippine Cases on the Doctrine of Corporate Opportunity

In 1979, the Court through *Gokongwei v. Securities and Exchange Commission*[47] *(Gokongwei)* pronounced that the doctrine on corporate opportunity "is precisely a recognition by the courts that the fiduciary standards could not be

upheld where the fiduciary was acting for two entities with competing interests."[48] It "rests fundamentally on the unfairness, in particular circumstances, of an officer or director taking advantage of an opportunity for his own personal profit when the interest of the corporation justly calls for protection."[49]

In 1992, the Court in *Ponce v. Legaspi*[50] reiterated that it is unfair for a director or any other person occupying a fiduciary position in the corporate hierarchy from engaging in a venture which competes with that of the corporation.[51]

Then in 1993, the Court in *Prime White Cement Corp. v. IAC,*[52] highlighted the duty of loyalty of a director, in this wise:

> A director of a corporation holds a position of trust and as such, he owes a duty of loyalty to his corporation. In case his interests conflict with those of the corporation, he cannot sacrifice the latter to his own advantage and benefit. As corporate managers, directors are committed to seek the maximum amount of profits for the corporation. This trust relationship "is not a matter of statutory or technical law. It springs from the fact that directors have the control and guidance of corporate affairs and property and hence of the property interests of the stockholders." In the case of *Gokongwei v. Securities and Exchange Commission,* this Court quoted with favor from *Pepper v. Litton,* thus:
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> > "x x x He cannot by the intervention of a corporate entity violate the ancient precept against serving two masters x x x He cannot utilize his inside information and his strategic position for his own preferment. He cannot violate rules of fair play by doing indirectly through the corporation what he could not do directly. He cannot use his power for his personal advantage and to the detriment of the stockholders and creditors no matter how absolute in terms that power may be and no matter how meticulous he is to satisfy technical requirements. For that power is at all times subject to the equitable limitation that it may not be exercised for the aggrandizement, preference, or advantage of the fiduciary to the exclusion or detriment of the cestuis. x x x"[53]

In 2009, the Court summarized, through *Strategic Alliance Development Corp. v. Radstock Securities Limited,*[54] the three-fold duty of members of the board of directors: duty of obedience, duty of diligence, and duty of loyalty. This means that directors: (1) shall direct the affairs of the corporation only in accordance with the purposes for which it was organized; (2) shall not willfully and knowingly vote for or assent to patently unlawful acts of the corporation or act in bad faith or with gross negligence in directing the affairs of the corporation; and (3) shall not acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees.[55]

The duty of loyalty in particular prohibits corporate directors, trustees, and officers from acquiring or attempting to acquire any personal or pecuniary interest—or any other interest for that matter—in conflict with or adverse to their duty as corporate fiduciaries.[56]

The recent case of *Ient v. Tullet Prebon (Philippines), Inc.,*[57] also discussed the relationship of the doctrine of corporate opportunity to the duty of loyalty.[58]

Unfortunately, none of the aforementioned cases have set actual parameters to determine what is considered as corporate opportunity that gives rise to a claim of damages. There are still no guidelines as to what factors should be considered by the courts in determining the award of damages under Section 34. Hence, the need at this time for the Court to fill the gaps of jurisprudence.

United States of America (US) Cases

As raised by Associate Justice Estela M. Perlas-Bernabe, and echoed by Associate Justices Alfredo Benjamin S. Caguioa and Amy C. Lazaro-Javier, the Court will look at several US cases to guide us in ascertaining the proper parameters and guideposts that will be useful and appropriate in our jurisdiction.

The corporate opportunity doctrine in US jurisprudence prohibits one who occupies a fiduciary relationship to a corporation from acquiring, in opposition to the corporation, property in which the latter has an interest or tangible expectancy or that is essential to its existence. Varying tests, however, have been established by different State jurisdictions in determining whether such doctrine has been breached.

First, *"the line of business test."* This test holds that a transaction is a corporate opportunity if it is within the scope of the corporation's own activities and of present or potential advantage to it. Under this test, corporate participants must refrain from taking for themselves the types of transactions in which their corporation normally engages.[59]

Second, *"the interest or expectancy test."* This test provides that "an opportunity is open to the director unless the corporation has an interest already existing [in the opportunity], or x x x it has an expectancy growing out of an existing right."[60] It does not bar directors from every transaction that appears useful to the corporation in hindsight, but only prevents the acquisition of property that the corporation needs or is seeking.

Third, *"the American Law Institute (ALI) test."* This provides that a director or senior executive may not take advantage of a corporate opportunity, unless: (a) he first offers the corporate opportunity to the corporation and makes disclosure concerning the corporate opportunity; (b) the corporate opportunity is rejected by the corporation; and (c) the rejection of the opportunity is fair to the corporation, or authorized by disinterested directors in a manner that satisfies the standards of the business judgment rule, or authorized or ratified by disinterested shareholders, and the shareholders' action is not equivalent to a waste of corporate assets. For this purpose, the ALI test defines a corporate opportunity as: (1) any opportunity to engage in any business activity of which a director or senior executive becomes aware either in connection with his functions as director or senior executive or under circumstances that should reasonably lead him to believe that the person offering the opportunity expects him to offer it to the corporation, or through the use of corporate information or property, if the resulting opportunity is one that the director or senior executive should reasonably be expected to believe would be of interest to the corporation; or (2) any opportunity to engage in a business activity—which includes the acquisition or use of any contract right or other tangible or intangible property—of which a senior executive becomes aware, if he knows or reasonably should know that the activity is closely related to the business in which the corporation is engaged or may reasonably be expected to engage.[61]

Common to these three tests is that they all state that "corporate opportunity exists when a proposed activity is reasonably an incident to the corporation's present or prospective business and is one in which the corporation has the capacity to engage."[62]

In the case of *Guth v. Loft, Inc.*[63] *(Guth),* the Supreme Court of the State of Delaware integrated these tests and elucidated as to when a corporate opportunity exists, when a corporate director or officer breaches his/her fiduciary duty to the corporation that he/she serves, and the consequences of such breach. To quote:

> Corporate officers and directors are not permitted to use their position of trust and confidence to further their private interests. While technically not trustees, they stand in a fiduciary relation to the corporation and its stockholders. A public policy, existing through the years, and derived from a profound knowledge of human characteristics and motives, has established a rule that demands of a corporate officer or director, peremptorily and inexorably, the most scrupulous observance of his duty, not only affirmatively to protect the interests of the corporation committed to his charge, but also to refrain from doing anything that would work injury to the corporation, or to deprive it of profit or advantage which his skill and ability might properly bring to it, or to enable it to make in the reasonable and lawful exercise of its powers. The rule that requires an undivided and unselfish loyalty to the corporation demands that there shall be no conflict between duty and self-interest. The occasions for the determination of honesty, good faith and loyal conduct are many and varied, and no hard and fast rule can be formulated. The standards of loyalty is measured by no fixed scale.
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> If an officer or director of a corporation, in violation of his duty as such, acquires gain or advantage for himself, the law charges the interest so acquired with a trust for the benefit of the corporation, as its election, while it denies to the betrayer all benefit and profit. The rule, inveterate and uncompromising in its rigidity, does not rest upon the narrow ground of injury or damage to the corporation resulting from a betrayal of confidence, but upon a broader foundation of a wise public policy that, for the purpose of removing all temptation, extinguishes all possibility of profit flowing from a breach of the confidence imposed by the fiduciary relation. Given the relation between the parties, a certain result follows; and a constructive trust is the remedial device through which precedence of self is compelled to give way to the stern demands of loyalty.
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> The rule, referred to briefly as the rule of corporate opportunity, is merely one of the manifestations of the general rule that demands of an officer or director the utmost good faith in his relation to the corporation which he represents.
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> x x x if there is presented to a corporate officer or director a business opportunity which the corporation is financially able to undertake, is, from its nature, in the line of the corporation's business and is of practical advantage to it, is one in which the corporation has an interest or a reasonable expectancy, and, by embracing the opportunity, the self-interest of the officer or director will be brought into conflict with that of his corporation, the law will not permit him to seize the opportunity for himself. And, if in such circumstances, the interests of the corporation are betrayed, the corporation may elect to claim all the benefits of the transaction for itself, and the law will impress a trust in favor of the corporation upon the property, interests and profits so acquired.[64]

In the latter case of *Broz v. Cellular Information Systems, Inc.*[65] *(Broz),* the Guth test on corporate opportunity was synthesized into four aspects, *viz*.:

> The corporate opportunity doctrine, as delineated by Guth and its progeny, holds that a corporate officer or director may not take a business opportunity for his own if: (1) the corporation is financially

able to exploit the opportunity; (2) the opportunity is within the corporation's line of business; (3) the corporation has an interest or expectancy in the opportunity; and (4) by taking the opportunity for his own, the corporate fiduciary will thereby be placed in a position inimicable to his duties to the corporation. x x x[66]

As clarified by *Broz,* however, the *Guth* test only sets guidelines, and that ultimately, "[n]o one factor is dispositive and all factors must be taken into account insofar as they are applicable."[67] Thus, the determination of whether or not a corporate director/officer has violated the doctrine "is a factual question to be decided by reasonable inference from objective facts."[68]

In addition to these cases, Associate Justice Alfredo Benjamin S. Caguioa raises other tests for the *En Banc's* consideration. First is the "fairness" test, under which the test of whether an opportunity is a corporate one rests on the query of whether a fiduciary's appropriation would fail the "ethical standards of what is fair and equitable in a particular set of facts."[69] It is similar to the line-of-business test in that it may disallow appropriation of not only existing but prospective opportunities of the corporation. While it admittedly poses "line-drawing"[70] problems with respect to delineating between appropriations that are fair to the corporation and those that are not, this test allows for malleability in the appreciation of what constitutes the foundational premise of fairness *vis-a-vis* corporations, consistent with the inclination of our legislative history, as pointed out by Associate Justice Samuel H. Gaerlan, that sought to codify the premium placed on the fiduciary duties of a corporate officer.[71]

Second is *Thorpe v. CERBO, Inc.*[72] *(Thorpe).* The case involved a shareholder who sued the company CERBO and its controlling shareholders who were also its officers and directors for breach of their duty of loyalty through the usurpation of a corporate opportunity. The officers and directors of CERBO objected to a third-party proposal because it would erode the control premium of their stocks. The Chancery Court appreciated the nuanced role of the officers and directors and as controlling shareholders in that while said officers did breach their duty of loyalty for failing to fully disclose the corporate opportunity, it also noted that as controlling shareholders, they could veto any transaction that would have constituted a sale of all or substantially all of the corporation's assets, so that the Court held that while there was a breach of loyalty, there was effectively no injury to the corporation. *Thorpe* would therefore be valuable in the appreciation of whether or not a director or officer of the corporation under fire pursuant to the corporate opportunity doctrine could not also have validly undertaken the same action in a different corporate capacity.[73]

Third is the case of *Benerofe v. Cha,*[74] which offers a defense against the corporate opportunity doctrine. The case involved shareholders who filed a case against their corporation Inorganic Coatings, Inc. (ICI) and its directors for allegedly entering into a stock purchase agreement that favored another corporation, designees of which also sat in the ICI's board. The court ruled that the shareholders failed to prove that the board of directors usurped a corporate opportunity of ICI since it failed to prove that ICI was in fact financially capable of exploiting the corporate opportunity that was supposedly usurped. The case would therefore be useful in refining the court's appreciation of the corporate opportunity doctrine, specifically in light of the "incapacity" defense, or the defense that submits that an opportunity is only a corporate one if the corporation itself could have, on its own, been able to exploit or seize the same had it not been appropriated by the fiduciary.[75]

Finally, another possible defense mentioned by Associate Justice Alfredo Benjamin S. Caguioa is the "source" defense, which was acknowledged by the ALI and line-of-business tests. The source defense mainly argues that the opportunity that the fiduciary appropriated was one pertaining to the fiduciary's personal skills and expertise, and not the corporations.[76]

Associate Justice Amy C. Lazaro-Javier also shared that it was common law which originally imposed the duty of a fiduciary upon a director or officer. Slowly, this common law duty has been codified in common law and hybrid common-civil law jurisdictions, such as ours.[77] The content of the fiduciary duty of directors and officers compels undivided loyalty which should be relentless and supreme. The highest standard of behavior is demanded which cannot be lowered even by the courts. This fiduciary duty requires directors and officers to avoid conflicts of interest with the corporation.[78]

The doctrine of corporate opportunity arises out of the fundamental obligation of a fiduciary not to allow a conflict of their duty with their own interests. The doctrine limits the ability of those who owe a fiduciary duty to a corporation to take advantage of business opportunities that might otherwise be available to them in the absence of the fiduciary relationship. According to a branch of common law, these business opportunities refer to those that either already belongs to the company or even for which it has been negotiating.[79]

As it is now broadly understood, the doctrine of corporate opportunity governs the legal responsibility of directors, officers and controlling shareholders in a corporation, under the duty of loyalty, not to take such opportunities for themselves, without first disclosing the opportunity to the board of directors of the corporation and giving the board the option to decline the opportunity on behalf of the corporation. If the procedure is violated and a corporate fiduciary takes the corporate opportunity anyway, the fiduciary violates its duty of loyalty and the corporation will be entitled to a constructive trust of all profits obtained from the wrongful transaction.[80]

Citing the 1995 case of *Northeast Harbor Golf Club v. Harris,*[81] Associate Justice Amy C. Lazaro-Javier surveyed several tests in determining whether the opportunity belongs or belonged to the corporation.

First are the "line of business," "fairness," and "ALI" tests which were already discussed above. Then, there is the "combined approach" which combines the "line of business test" with the "fairness" test.

Guided by the ruling in *Matic v. Waldner,*[82] Associate Justice Amy C. Lazaro-Javier then suggests that when deciding whether a corporate opportunity exists, that a director or officer has availed of and could be held liable for, all relevant factors must be taken into account, including:

- Whether it was actively pursued by the corporation;
- Whether the corporation was capable of taking advantage of the opportunity
- Whether the opportunity was in the corporation's line of business or a related business;
- How the opportunity arose or came to the attention of the director or officer;
- Whether the other directors of the corporation had knowledge of the director's pursuit of the opportunity; and
- Whether the other directors gave their fully informed consent to the director's pursuit of the opportunity.[83]

Associate Justice Amy C. Lazaro-Javier explains that the goal of the analysis is to determine whether the opportunity fairly belonged to the corporation in the circumstances. The keystone "fairly belonged" brings together the sense of both the statutory provision which states that the opportunity "should belong" to the corporation[84] and the legislative history[85] of the provision that an opportunity "may be available" to the corporation.[86]

In fine, the above discussion leads to Associate Justice Estela M. Perlas-Bernabe's proposed guidelines which adopted the *Guth* ruling that is appropriate in our jurisdiction.

Thus, a claim of damages under Section 34 of the Corporation Code (now Section 33 of the RCC) arises when a corporate officer or director takes a business opportunity for his own, provided that it is sufficiently shown by the claimant that:

(a) The corporation is financially able to exploit the opportunity;

(b) The opportunity is within the corporation's line of business;

(c) The corporation has an interest or expectancy in the opportunity; and

(d) By taking the opportunity for his own, the corporate fiduciary (*i.e.,* corporate director, trustee or officer) will thereby be placed in a position inimicable to his duties to the corporation.

In determining paragraph (b), whether the opportunity is within the corporation's line of business, the involved corporations must be shown to be in competition with one another. They must be engaged in related areas of businesses, producing the same products with overlapping markets.

As pointed out by Associate Justice Marvic M.V.F. Leonen, the test laid down in *Gokongwei* is very much relevant to the instant case. In *Gokongwei,* it was held that "the test must be whether the business does in fact compete."[87] It further defined "competition," as "a struggle for advantage between two or more forces, each possessing, in substantially similar if not identical degree, certain characteristics essential to the business sought."[88] Factors, such as "quantum and place of business, identity of products and area of competition should be taken into consideration." The Court even pointed out that it is "therefore, necessary to show that [the director's] business covers a substantial portion of the same markets for similar products to the extent of not less than 10% of [petitioner] corporation's market for competing products."[89]

Consequently, it is not enough to impute bare acts of transactions in which the claimant subjectively perceives the duty of loyalty to be breached. Sufficient evidence must be presented to show that the claim of damages is indeed premised on a concrete corporate opportunity falling under the parameters above-stated. Only then may actual damages relative to such lost opportunity be awarded.

Chang's Liability

Here, the Court agrees with the RTC that Chang committed several acts showing personal or pecuniary interest that were in conflict with his duties as director and officer of TOPROS.

There is no dispute that Chang established Identic in 1989, Golden Exim in 1990, and TOPGOLD in 1998 which were in the same line of business and while still an officer and director of TOPROS.[90] The Articles of Incorporation of Golden Exim and TOPGOLD show that Chang owned 80% of the shares of Golden Exim; and Chang, together with

his son, owned 99.76% of the shares in TOPGOLD. The General Information Sheet of Identic also showed that Chang owned 65% of Identic.[91]

The service report of Linde, which was a client of TOPROS, as well as the provisional receipts issued by Golden Exim, showed that Golden Exim entered into a service contract with the same client at the same time that TOPROS was servicing it.[92] In 1998, TOPGOLD published printed advertisements which were strikingly similar to those previously printed by TOPROS in 1997, with the difference that the phrase "now available at TOPROS" was changed to "now available at TOPGOLD."[93]

Chang, as President and General Manager of TOPGOLD, signed a deed of assignment with Hector as Service and Operations Manager of TOPROS which made it appear that TOPROS assigned its rights under several rental agreements with different entities for the lease of various kinds of office equipment to TOPGOLD. It also authorized the corresponding rental payments on the rental agreements to be paid to TOPGOLD.[94]

TOPGOLD uses the same address as TOPROS which not only gives it the opportunity to use TOPROS' resources but leads the public to believe that they are one and the same entity, if not intimately related to each other. The Articles of Incorporation of TOPGOLD show its address as 1465 E. Rodriguez, Sr. Ave., Cubao, Quezon City.[95] A printed advertisement of TOPROS shows that it has the same address.[96]

A 1,445-square-meter parcel of land along E. Rodriguez Avenue, Quezon City, on which TOPROS' building stands, was registered in the name of Golden Exim in 1993 even though Golden Exim was incorporated only three years prior to the purchase of the property.[97] When it was incorporated in 1990, Golden Exim only had an authorized capital stock of P2,000,000.00.[98]

When asked why he gave the investment opportunity to Golden Exim and not to TOPROS, Chang answered that he had to make his own living.[99]

> The Transcript of Stenographic Notes (TSN) reads:
>
> COURT Why did you not buy the E. Rodriguez property for Topros?
>
> WITNESS
>
> A Because this is Golden Exim Investment, sir.
>
> ATTY. RIVERA
>
> Q- Why did you not give the opportunity to Topros?
>
> That's the question.
>
> A- Well, that's my decision.
>
> Q- So, instead of giving that opportunity to Topros, you decided to [sic] Golden Exim because that is your decision?
>
> A- Of course, I have to have my own living.
>
> I have to have my own earning and I have to have my own identity. And Golden Exim and Identic are all my identity.[100]

For his defense, Chang argued that he did most of the work of TOPROS from its incorporation in 1983 until his ouster as President and General Manager in 1998 and that he also paid for the loans of TOPROS with Chinabank in view of his having signed as guarantor or surety for the loans.[101]

In his Comment, Chang states: (1) that he practically shouldered the burden of running the entire business, including bearing its liabilities, without any help from the rest of the board of directors and stockholders and that because of Mr. Ramon Ty's refusal and strict order that Chang sign the surety agreement in his personal capacity, Chang was convinced and applied for and guaranteed TOPROS' loans in his personal capacity since 1986 until the filing of the present action; (2) that in 1988, he talked to Ramon and expressed his intention of leaving TOPROS to further his business and establish a name for himself; (3) that Ramon asked him to remain with TOPROS but encouraged him to organize and establish his own corporations; that he formed Identic, Golden Exim, and TOPGOLD with the full knowledge, consent and approval of the Ty Family; and (4) that as proof, he cited the business ventures entered into by the respondent-corporations with TOPROS and the participation of Warren as incorporator and stockholder of Identic.[102]

However, the fact that Chang risked his own funds in running TOPROS and paying off its obligations will not absolve him of his duties as director and officer of TOPROS.

Even if admitted, the circumstances cited by Chang, which suggest of knowledge, tolerance, or even acquiescence of TOPROS to his establishment of the respondent-corporations which are in the same business as TOPROS, do not amount to the compliance required of Section 34 to absolve a director of disloyalty. The law explicitly requires that where a director, by virtue of his office, acquires for himself a business opportunity which should belong to the corporation, he must account to the latter for all profits by refunding them, unless his act has been ratified by a vote of the stockholders owning or representing at least two-thirds of the outstanding capital stock.

The Court agrees with the RTC that even if the incorporation of the respondent-corporations was with the full knowledge of the members of the Ty Family, this does not equate to consent to the prejudicial transfer and acquisition of properties and opportunities of TOPROS which Chang, through his corporations, has shown to have committed.[103]

Chang, to show that the incorporation of Golden Exim and Identic was with the full knowledge of the Ty Family, presented as evidence: (a) the souvenir program of POMDA Exhibit in 1993;[104] (b) advertisement clippings of health product Green-C Chlorella;[105] (c) letter indorsement of Ramon promoting Green-C Chlorella;[106] (d) advertisement clippings of TOPROS and Golden Exim and Identic;[107] and (e) cover of VAT Book of Pantrade for 1997 where Golden Exim and Identic were listed as suppliers of Pantrade.[108] However, Chang failed to show that his actions have been ratified by a vote of the stockholders representing at least two-thirds of the outstanding capital stock of TOPROS.

> Chang admitted in open court, *viz*.:
>
> ATTY. RIVERA
>
> Q Then, of course, you have no document showing that Topros authorized your three (3) corporations to do that line of a particular business?
>
> A- I have. x x x
>
> x x x x
>
> These are advertisements in which Golden Exim, Identic, Pantrade, Topgold, Topros. You [c]ould see that we are authorized dealer with the knowledge of Mr. Ramon Ty. You will see everything is here.
>
> x x x x
>
> Q- I'[m] not asking for an advertisement. I'm asking for a specific authority from Topros for you and your [companies] to engaged [sic] in that line of business which you admitted to be in direct competition with the business of Topros?
>
> A- These are all with the approval of Mr. Ramon Ty in which, you could [see] that this is part of your exhibits.
>
> Q- So, in other words, aside from those documents you have no other documents to show?
>
> A- I have no other documents but these documents was back in 1991, 1992, 1993, 1994 which we are already authorized dealer.[109]

In view of the circumstances, TOPROS was correct in pointing out that the doctrine of "corporate opportunity" applies in the case.

To determine the exact liability of Chang, however, the instant case should be remanded to the trial court for the reception of additional evidence and the reevaluation of evidence already submitted, guided by the parameters aforementioned. That is, TOPROS as claimant bears the burden of proving the specific business opportunities that gave rise to its claim of damages under Section 34 of the Corporation Code. In turn, Chang may present evidence to support his claim that: (a) the corporation was already heavily in debt and that TOPROS' patriarch, Ramon Ty, was no longer interested in corporate rehabilitation, so much so that he was already letting Chang to allow TOPROS to go bankrupt; and (b) that the corporation had already closed down prior to respondents' taking of certain corporate opportunities, among others.

Also it should be made clear that the claim for damages under Section 34 of the Corporation Code necessitates factual determinations which—while it may be arrived at with the aid of an accounting committee—must be ultimately made by the RTC itself in the exercise of its judicial functions, embodied in a final judgment.

In closing, it is well to recall that the doctrine of corporate opportunity is not based on theoretical abstractions, but on human experience that a person cannot serve two hostile masters without detriment to one of them. Where a director is so employed in the service of a rival company, he cannot serve both, but must betray one or the other. An officer of a corporation cannot engage in a business in direct competition with that of the corporation where he is a

director by utilizing information he has received as such officer, under the established law that a director or officer of a corporation may not enter into a competing enterprise which cripples or injures the business of the corporation of which he is an officer or director. It is also established that corporate officers are not permitted to use their position of trust and confidence to further their private interests. Where two corporations are competitive in a substantial sense, it would seem improbable, if not impossible, for the director, if he were to discharge effectively his duty, to satisfy his loyalty to both corporations and place the performance of his corporation duties above his personal concerns.[110]

With the guidelines set forth, the courts will now be able to determine in concrete and quantifiable terms, the liability and accountability of erring directors and officers; thus, finally giving life to the statutory provisions aimed to curb disloyal acts and punish erring corporate directors and officers.

> **WHEREFORE**, the petition is **GRANTED**. The Decision dated June 17, 2011 and the Resolution dated January 2, 2012 of the Court of Appeals in CA-G.R. SP Nos. 103047 and 103119 are **SET ASIDE**. Civil Case No. 68327 is **REMANDED** to Branch 158, Regional Trial Court, Pasig City for resolution of the case, with dispatch, following the guidelines set forth in this Decision.
>
> **SO ORDERED.**

Gesmundo, C.J., Hernando, Carandang, Zalameda, M. Lopez, Gaerlan, Rosario, J. Lopez, and Marquez, JJ., concur.

Perlas-Bernabe, J., Please see Concurring Opinion.

Leonen, J., see Concurring Opinion.

Caguioa, J., see Concurring Opinion.

Lazaro-Javier, J., Please see Concurring Opinion.

Dimaampao, J., on official leave.

Footnotes

[1] Gokongwei, Jr. v. Securities and Exchange Commission, 178 Phil. 266, 304 (1979).

[2] *Rollo,* pp. 3-55.

[3] *Id.* at 78-96; penned by Associate Justice Rodil V. Zalameda (now a Member of the Court) with Associate Justices Amelita G. Tolentino and Normandie B. Pizarro, concurring.

[4] *Id.* at 76-77.

[5] *Id.* at 58-75; penned by Presiding Judge Maria Rowena Modesto-San Pedro.

[6] CA *rollo,* pp. 376-401.

[7] Records, Vol. I, pp. 1-21.

[8] *Id.* at 110-129.

[9] *Rollo,* pp. 58-59; see also records, Vol. I, p. 110.

[10] *Rollo,* p. 84.

[11] *Id.* at 59-60.

[12] *Id.* at 60.

[13] *Id.*

[14] *Id.*

[15] *Id.* at 60-61.

[16] *Id.* at 61.

[17] *Id.*

[18] *Id.* at 61-62.

[19] *Id.* at 62.

[20] *Id.*

[21] Records, Vol. II, pp. 409-416.

[22] *Id.* at 410-411.

[23] *Rollo,* p. 63.

[24] *Id.* at 58-75.

[25] *Id.* at 74-75.

[26] *Id.* at 64-65.

[27] Batas Pambansa Blg. (BP) 68, approved on May 1, 1980.

[28] *Rollo,* pp. 68-69.

[29] *Id.* at 78-79.

[30] *Id.* at 78-96.

[31] *Id.* at 95.

[32] *Id.* at 88-90.

[33] *Id.* at 93-94.

[34] See Resolution dated January 2, 2012 of the Court of Appeals, id. at 76-77.

[35] *Id.* at 21-22.

[36] *Id.* at 28-29.

[37] *Id.* at 30.

[38] *Id.* at 136-161.

[39] *Id.* at 136-138.

[40] See Comment/Opposition to the Petition for Review of TOPROS dated April 24, 2012, id. at 163-177.

[41] *Id.* at 165-169.

[42] See Section 187 of Republic Act No. 11232.

[43] Palafox v. Wangdali, G.R. No. 235914, July 29, 2020; General Milling Corp. v. Casio, 629 Phil. 12, 27 (2010).

[44] See I/AME v. Litton and Co., Inc., 822 Phil. 610, 618-619 (2017); Heirs of Fe Tan Uy v. International Exchange Bank, 703 Phil. 477, 484-485 (2013).

[45] Ient v. Tullett Prebon (Phils.), Inc., 803 Phil. 163, 195 (2017), citing Record of Batasan (RB), December 4, 1979, p. 1614.

[46] *Id.* at 196-199, citing RB, November 5, 1979, pp. 1217-1219.

[47] Gokongwei, Jr. v. Securities and Exchange Commission, *supra* note 1.

[48] *Id.* at 302.

[49] *Id.*, citing Paulman v. Kritzer, 74 Ill. App. 2d 284, 291 NE 2d 541 (1966); Tower Recreation, Inc. v. Beard, 141 Ind. App. 649, 231 NE 2d 154 (1967).

[50] 284 Phil. 517 (1992).

[51] *Id.* at 533.

[52] 292-A Phil. 198 (1993).

[53] *Id.* at 205, citing Gokongwei, Jr. v. Securities and Exchange Commission, *supra* note 1 at 299-300, further citing Pepper v. Litton, 308 U.S. 295-313, 84 L. Ed. 281, 291-292 (1939). Citations omitted.

[54] 622 Phil. 431 (2009).

[55] *Id.* at 476-477.

[56] *Id.*

[57] Ient v. Tullett Prebon (Phils.), Inc., *supra* note 45.

[58] *Id.* at 202-203.

[59] Michael Begert, The Corporate Opportunity Doctrine and Outside Business Interests, The University of Chicago Law Review, Vol. 56, No. 2, The Federal Court System (Spring, 1989).

[60] *Id.*

[61] *Id.*

[62] *Id.*, citing Fletcher's Cyclopedia of the Law of Corporations.

[63] 23 Del. Ch. 255 (1939).

[64] *Id.* at 270-274.

[65] 673 A.2d 148 (Del. 1996).

[66] *Id.* at 154-155.

[67] *Id.* at 155.

[68] *Id.* at 154.

[69] Talley, Eric and Mira Hashmall, The Corporate Opportunity Doctrine, February 2001, p. 8, available at (last accessed on December 1, 2021), citing Durfee v. Durfee & Canning, Inc., 80 N.E. 2d 522, 529 (Mass. 1948), further citing Henry Withrop Ballantine, Ballantine on Corporation, 204-05 (rev. ed. 1946).

[70] *Id.*

[71] Concurring Opinion of Associate Justice Alfredo Benjamin S. Caguioa, p. 3.

[72] 676 A. 2d 436 (Del. 1996).

[73] Concurring Opinion of Associate Justice Alfredo Benjamin S. Caguioa, pp. 3-4.

[74] C.A. No. 14614 1998 Del. Ch. LEXIS 28 (1998).

[75] Concurring Opinion of Associate Justice Alfredo Benjamin S. Caguioa, p. 4.

[76] *Id.*, citing Benerofe v. Cha, *supra* note 74.

[77] Concurring Opinion of Associate Justice Amy C. Lazaro-Javier, p. 1.

[78] *Id.* at 3, citing Meinhard v. Salmon, 249 N.Y. 458, 164 N.E. 545 (1928).

[79] *Id.*, citing Matic v. Waldner, 2016 MBCA 60 (CanLII) (Manitoba Court of Appeals, Canada); Canadian Aero Service Ltd. v. O'Malley,[1974] SCR 592 (Supreme Court of Canada).

[80] *Id.*, citing Cornell Law School, Legal Information Institute, available at (last accessed: September 30, 2021).

[81] 661 A. 2d 1146 (1995).

[82] 2016 MBCA 60 (CanLII) (Manitoba Court of Appeals, Canada).

[83] Concurring Opinion of Associate Justice Amy C. Lazaro-Javier, p. 9.

[84] See Section 34 of BP 68 or The Corporation Code of the Philippines.

[85] In the deliberations of Sec. 34, Minister Mendoza explained corporate opportunity and mentioned that "with the statutory rule, any director who comes to know of an opportunity that may be available to the corporation would be aware of the consequences in case he avails of the opportunity without giving the corporation the privilege of deciding beforehand on whether to take advantage of it or not. (Italics supplied.)

[86] Concurring Opinion of Associate Justice Amy C. Lazaro-Javier, p. 9.

[87] Gokongwei, Jr. v. Securities and Exchange Commission, *supra* note 1 at 311.

[88] *Id.*

[89] *Id.* at 312.

[90] *Rollo,* pp. 142-143; See also TOPGOLD Philippines, Inc. Articles of Incorporation, records, Vol. III, pp. 74-78.

[91] Exhibits "V" and "X," records, Vol. III, pp. 67, 75, 244.

[92] Exhibits "O," "P" and "Q," id. at 51-55.

[93] Exhibits "AA" and "AA-1" id. at 84-85.

[94] See Deed of Assignment, *rollo,* pp. 104-106.

A portion of the deed of assignment reads:

"That for and in consideration of the assumption by the ASSIGNEE of the ASSIGNOR'S obligation under the aforesaid rental agreements, the ASSIGNOR by these presents do hereby cede, convey and transfer unto this ASSIGNEE, its rights under the above described rental agreements.

"That by virtue of these presents, the ASSIGNOR hereby relinquishes its right to demand and sue for the rental payments from the above-described lessee-entities in favor of the ASSIGNOR and in furtherance thereof, authorize all the aforesaid lessor-entities to make rental payments under their respective rental agreements payable to the ASSIGNEE;" id. at 104-105.

[95] Records, Vol. III, pp. 74 and 82.

[96] Exhibit "I," id. at 44.

[97] Exhibits "W" Transfer Certificate Title No. 85410, id. at 73.

[98] *Id.* at 67.

[99] TSN, January 17, 2003, pp. 110-111.

[100] *Id.*

[101] See Formal Offer of Evidence of Defendant Chang, records, Vol. III, p. 284.

[102] *Rollo,* pp. 141-143.

[103] *Id.* at 70.

[104] Records, Vol. III, pp. 272-279.

[105] *Id.* at 280-281.

[106] *Id.* at 282.

[107] *Id.* at 283-291.

[108] *Id.* at 292-294.

[109] TSN, January 7, 2003, pp. 106-107.

[110] Gokongwei, Jr. v. Securities and Exchange Commission, *supra* note 1 at 303.

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REPUBLIC OF THE PHILIPPINES
Supreme Court
Manila

THIRD DIVISION

[G.R. Nos. 201044 & 222691, May 05, 2021]

JORGENETICS SWINE IMPROVEMENT CORPORATION, PETITIONER, VS. THICK & THIN AGRI-PRODUCTS, INC., RESPONDENT.

D E C I S I O N

HERNANDO, *J.:*

Before this Court are two (2) consolidated Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court.

The Petition in G.R. No. 201044 assails the March 29, 2011 Decision[1] and February 29, 2012 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP. No. 114682 which, set aside the February 4, 2010 Order of the trial court and reinstated the complaint for replevin filed by Thick & Thin Agri-Products, Inc. (TTAI) in Civil Case No. Q-08-63757.

On the other hand, the Petition in G.R. No. 222691 assails the CA's October 29, 2014 Decision[3] and January 8, 2016 Resolution[4] in CA-G.R. SP No. 130075, which found the trial court in Civil Case No. Q-08-63757 to have acted with grave abuse of discretion for refusing to reinstate the complaint for replevin and ordering the implementation of the February 4, 2010 Order of the trial court despite the issuance of the CA's March 29, 2011 Decision in CA G.R. SP. No. 114682.

The Factual Antecedents:

On November 10, 2008, TTAI filed a complaint for replevin with damages[5] against Jorgenetics Swine Improvement Corporation (Jorgenetics), seeking possession of 4,765 heads of hogs that were the subject of a chattel mortgage between the parties. In its complaint, TTAI alleged that the parties entered into an agreement where TTAI would supply, on credit, feeds and other supplies necessary for Jorgenetics' hog raising business. As security for payment of their obligation amounting to Php20,000,000.00, Jorgenetics executed a chattel mortgage[6] over its hog livestock inventories in favor of TTAI. While TTAI delivered feeds and supplies pursuant to the agreement, Jorgenetics failed to pay for the same despite demand.[7]

Thus, TTAI alleged in its complaint that as mortgagee it was entitled to take immediate possession of the livestock subject of the mortgage which was wrongfully withheld by Jorgenetics to avoid compliance of its obligation.[8] It prayed for the immediate issuance of a writ of replevin commanding the immediate seizure of the hogs, for judgment to be rendered adjudicating rightful possession of the hogs subject of the mortgage to TTAI, or in the event possession could not be secured, the payment of Php20,000,000.00 with interest, and for damages, attorney 's fees, and costs.[9]

The complaint was raffled to the Regional Trial Court (RTC) of Quezon City, Branch 92. The next day, the trial court issued a writ of replevin and required Jorgenetics to post a bond in the amount of Php40,000,000.00.[10]

While the writ of replevin was served on May 29, 2009, the return thereon indicated that the writ, together with a copy of TTAI's affidavit and bond, as well as the summons and TTAI's complaint, were served on petitioner's farm through its purchasing officer Rowena Almirol (Almirol), who refused acknowledgment of the documents. The return likewise stated that the 4,765 heads of hog livestock subject of the writ were seized and delivered to respondent.[11]

Jorgenetics moved to dismiss the complaint for replevin on the ground of invalid service of summons since service was made on its farm in Rizal instead of its place of business in Quezon City, and in view of the lack of justification from the sheriff for availing of substituted service to the person of Almirol. In its motion to dismiss, Jorgenetics likewise prayed for the quashal of the writ of replevin and for the replevin bond to be made wholly answerable for the damages it allegedly suffered.[12]

The case was re-raffled to Branch 93 and subsequently to Branch 75.[13] Thereafter, the trial court issued the February 4, 2010 Order,[14] directing the dismissal of the complaint for replevin for failure to acquire jurisdiction over the person of Jorgenetics by reason of the invalid service of summons. The fallo of the February 4, 2010 Order reads:

> **WHEREFORE**, premises considered, this case is ordered dismissed.
>
> Accordingly, the properties seized by virtue of the writ of replevin are ordered returned to the defendant-movant.
>
> **SO ORDERED.**[15]

TTAI moved for reconsideration. However, this was denied by the trial court.[16]

Thereafter, Jorgenetics filed on June 18, 2010 a Motion for the Issuance of a Writ of Execution with Application for Damages against the replevin bond, alleging that it incurred damages on account of the alleged wrongful seizure of the hogs. Among others, Jorgenetics vowed to present proof of the damages it incurred in the hearing on the application for Damages.[17] The trial court set the hearing on the Motion for the Issuance of a Writ of Execution with Application for Damages on the same day, and ordered TTAI to file its comment or opposition thereto and, upon receipt thereof, for Jorgenetics to file a reply within the same period.[18]

Aggrieved, TTAI filed a Petition for *Certiorari*[19] under Rule 65 against Jorgenetics and Hon. Alexander S. Balut (Judge Balut) in his capacity as presiding judge of Branch 75. In the petition docketed as CA G.R. SP. No. 114682, TTAI faulted the trial court for taking cognizance of the Motion for the Issuance of a Writ of Execution with Application for Damages and continuing to conduct trial on the merits in the guise of execution proceedings despite the dismissal of the case. TTAI thus prayed for the annulment of the February 4, 2010 and May 6, 2010 Orders of the trial court, which dismissed the complaint for replevin, in view of Jorgenetics' voluntary submission to the jurisdiction of the trial court.

While CA G.R. SP. No. 114682 was pending before the appellate court, proceedings before the trial court continued. In the meantime, TTAI filed a petition for extrajudicial foreclosure of the chattel mortgage covering the hogs. After winning the bid at public auction, a certificate of sale of the hogs subject of the chattel mortgage was issued in TTAI's favor.[20]

In an October 6, 2010 Order[21] resolving the application for damages against the replevin bond and motion for the issuance of a writ of execution, the trial court ordered Jorgenetics to present its evidence in support of its claim for damages against the replevin bond. The trial court opined that the February 4, 2010 order dismissing the complaint for replevin became final and executory in view of TTAI's failure to appeal, and that the application for damages was corollary to the motion to issue writ of execution under Section 6, Rule 39 of the Rules of Court.

Further, the trial court stated that Jorgenetics was entitled to damages against the replevin bond , since the patties must necessarily revert to their status prior to litigation. However, given the physical impossibility for the return of the hogs, logical and equitable consideration dictate the application against the bond for damages.

TTAI moved for reconsideration of the October 6, 2010 Order and the voluntary inhibition of Judge Balut. However, this was denied.[22] Thereafter, the trial court granted Jorgenetics' motion for issuance of a writ of execution on the ground that the February 4, 2010 order of dismissal had long become final and executory.[23] The writ of execution was issued on January 18, 2011.[24]

TTAI moved to quash the writ of execution. It alleged that it was already the rightful owner of the property subject of the writ of replevin as the winning bidder in the foreclosure sale for the hogs subject of the chattel mortgage, as evidenced by the Certificate of Sale.[25] In turn, Jorgenetics filed an urgent *ex-parte* Motion for deposit of the auction proceeds with the court.[26]

Judge Balut granted the latter motion on the basis of the final and executory nature of the February 4, 2010 Order. He also ordered the deposit of the proceeds of the sale of the hogs with the Office of the Clerk of Court and set the hearing date for the reception of evidence in support of Jorgenetics' application for damages.[27] TTAI moved for reconsideration of the said Order.[28]

Thereafter, Judge Balut inhibited himself from conducting further proceedings. The case was raffled to RTC Branch 226, then presided by Judge Ma. Luisa C. Quijano-Padilla.[29]

Ruling of the Court of Appeals in CA-G.R. SP. No. 114682 (now G.R. No. 201044):

On March 29, 2011, the appellate court issued the Decision[30] in CA-G.R. SP No. 114682 nullifying the order of dismissal and reinstating TTAI's complaint for replevin. The fallo of the March 29, 2011 Decision reads:

> **WHEREFORE**, the petition is **GRANTED**. The assailed orders of the Regional Trial Court of Quezon City, Branch 75 are **ANNULLED** and **SET ASIDE**. Petitioner's complaint for replevin with damages is ordered reinstated. Accordingly, the case is **REMANDED** to said court for further proceedings.
>
> **SO ORDERED.**[31]

In so ruling, the appellate court noted that Jorgenetics voluntarily submitted itself to the jurisdiction of the trial court in filing the application for damages against the bond and motion for the issuance of a writ of execution without objecting to the trial court's jurisdiction.[32] Moreover, the dismissal of the action for replevin is wholly inconsistent with the trial court's cognizance of Jorgenetics' application for damages against the replevin bond. It opined that the dismissal of an action without prejudice means that no trial shall be conducted thereon unless plaintiff refiles the case, while an application for damages against the replevin bond presupposes that a trial on the merits of the case was had and that the defendant obtained a favorable judgment from the court.[33]

Jorgenetics moved for reconsideration, which was denied in a February 29, 2012 Resolution.[34] Thus, on May 8, 2012, it filed a Petition for Review on *Certiorari* before this Court, assailing the CA's reinstatement of the replevin case. This was docketed as G.R. No. 201044.

Proceedings in G.R. No. 222691:

In the meantime, proceedings continued in RTC Branch 226. In its April 29, 2011 Resolution, the trial court granted (a) TTAI's motion for reconsideration of Judge Balut's order to deposit the proceeds of auction sale and setting the date for the reception of evidence in support of Jorgenetics' application for damages, and (b) the motion to quash writ of execution, holding therein that all subsequent proceedings held after the dismissal of the complaint for replevin is without force and effect. It also held that although the Order dated February 4, 2010 gave Jorgenetics a clear right to recover the hogs or the value thereof, the same must be done in a separate proceeding.[35]

In view thereof, Jorgenetics filed a separate petition for the issuance of a writ of possession with Branch 98, which was dismissed in view of the finality of the February 10, 2010 Order. Branch 98 opined that Branch 226 still has residual jurisdiction to carry into effect the February 10, 2010 Order in accordance with Section 6, Rule 39 of the 1997 Rules of Civil Procedure, prompting Jorgenetics to file a Motion for Writ for Execution and/or Writ of Possession dated 13 January 2012.[36]

In its May 7, 2012 Resolution, Branch 226 denied Jorgenetics' Motion for Writ for Execution and/or Writ of Possession. Taking heed of the appellate court's March 29, 2011 Decision, it also ordered that the case be reinstated and for Jorgenetics to file its answer to the complaint for replevin.[37] Jorgenetics moved for reconsideration of the May 7, 2012 Resolution while TTAI moved for Jorgenetics to be declared in default for failure to file an answer to the complaint for replevin.[38]

Meanwhile, then Presiding Judge Quijano-Padilla of Branch 226 was appointed to the CA, which paved the way for Judge Cleto R. Villacorta's (Judge Villacorta) designation as Presiding Judge of Branch 226. In an October 18, 2012 Order[39], Judge Villacorta granted Jorgenetics' motion for reconsideration, thus denying the motion to declare Jorgenetics in default. Despite the March 29, 2011 Decision of the appellate court in CA G.R. SP. No. 114682 nullifying the order of dismissal and reinstating TTAI's complaint for replevin, Judge Villacorta opined that the February 4, 2010 Order dismissing the complaint must be enforced since the same lapsed into finality despite the filing of the petition for *certiorari* assailing the same, because the CA did not issue any injunctive relief while the case was still pending before the trial court. Thus, Judge Villacorta ordered the return of the properties subject of replevin to Jorgenetics.

The fallo of the October 18, 2012 Order reads:

> **WHEREFORE**, the Motion for Reconsideration filed by defendant is granted. The Motion to Declare Defendant in Default filed by plaintiff is denied. The Order of May 7, 2012 is modified. The Order of February 4, 2010 must be enforced, implemented or executed pursuant to A.M. No. 07-7-12-SC, which states in part "[t]he petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against public respondent from further proceeding in the case." Hence, this case remains dismissed and plaintiff is directed to comply with the directive in the Order that "the properties seized by virtue of the writ of replevin are ordered returned to the defendant-movant" within thirty (30) days from receipt of this Order. Notify the parties and counsel.
>
> **SO ORDERED.**[40]

TTAI moved for reconsideration and the voluntary inhibition of Judge Villacorta. Thus, Judge Villacorta inhibited himself from hearing the case, which was re-raffled to Branch 216 presided by Judge Alfonso C. Ruiz II (Judge Ruiz).[41]

On March 15, 2013, Judge Ruiz ordered the reinstatement of the case pursuant to the March 29, 2011 Decision of the appellate court in CA G.R. SP. No. 114682 and the return of the properties subject of the writ to Jorgenetics.[42] The fallo of the March 15, 2013 Order reads:

> **WHEREFORE**, pursuant to the Decision of the Court of Appeals on March 29, 2011 in CA-G.R. SP. No. 114682, setting aside the Orders dated February 4, 2010 and May 6, 2010, this case is hereby **REINSTATED** and placed on the active file of this court.
>
> The defendant is ordered to file its Answer to the Complaint within five (5) days from receipt of this Order.
>
> Meanwhile, the plaintiff is ordered to return to the defendant the properties seized by virtue of the writ of replevin.
>
> **SO ORDERED.**[43]

In so ruling, Judge Ruiz opined that Jorgenetics' voluntary submission to the jurisdiction of the trial court did not cure the defect in the service of the writ of replevin, that the only issue resolved in the March 29, 2011 Decision in CA G.R. SP. No. 114682 was the issue on the acquisition of the court of jurisdiction over the person of Jorgenetics, and that the court a quo did not overrule the finding of the court on the impropriety of the service of the writ of replevin.[44]

Aggrieved, TTAI assailed the October 18, 2012 and March 15, 2013 Order of the trial court with the CA via a Petition for *Certiorari* docketed as CA-G.R. SP No. 130075.[45]

The appellate court granted the Petition for *Certiorari*. The fallo of the CA's October 29, 2014 Decision reads:

> **WHEREFORE**, finding merit in the petition, the Court GRANTS the petition for *certiorari* and hereby DECLARES the assailed order of October 18, 2012 issued by the trial court NULL and VOID and is hereby **SET ASIDE**. As for the order of March 15, 2013, the same is hereby **AFFIRMED** with **MODIFICATION** in that the portion invalidating the writ of replevin and ordering the return of the hogs to respondent is hereby DELETED.
>
> **SO ORDERED.**[46]

Anent the October 18, 2012 Order, the CA stressed that the trial court acted in grave abuse of discretion in refusing to reinstate TTAI's complaint for replevin and ordering the implementation of the February 4, 2010 Order even though the March 29, 2011 Decision in CA G.R. SP. No. 114682 had already declared the February 4, 2010 Order dismissing the complaint as void.[47]

The appellate court likewise noted that the February 4, 2010 order, as a void judgment, could not have lapsed into finality and its execution has no basis in law.[48] As regards the March 15, 2013 Order, the appellate court noted that while the voluntary submission of Jorgenetics did not cure the defect in the service of the writ of replevin, the writ of replevin must be maintained until Jorgenetics seeks to quash the writ of replevin or have the order of seizure vacated through an appropriate motion, but not through a motion for execution of a void order.[49]

Jorgenetics moved for reconsideration, which was denied in a January 8, 2016 Resolution.[50] Hence, it filed a Petition for Review on *Certiorari* docketed as G.R. No. 222691, seeking the reversal of the CA's October 29, 2014 Decision in CA-G.R. SP No. 130075 and for the affirmation in toto of the trial court's: (a) October 18, 2012 Order, which mandated the enforcement of the February 4, 2010 Order of dismissal of the trial court and the return of the properties subject of replevin to Jorgenetics; and (b) March 15, 2013 Order, which mandated the reinstatement of the case pursuant to the March 29, 2011 Decision in CA G.R. SP. No. 114682 but which likewise ordered the return of the properties subject of replevin to Jorgenetics.[51]

Notably, TTAI filed a Manifestation and Motion[52] on December 13, 2017, where it manifested that the trial court has rendered a May 2, 2017 decision on the merits in the main case, declaring TTAI as the rightful possessor of the hogs and ordering Jorgenetics to pay TTAI the deficiency judgment in the amount of P14,999,980.00 along with interest, attorney's fees, and costs of the suit. TTAI manifested that in view of the lapse of the period to move for the reconsideration or appeal the above indicated Decision without any action on the part of the parties, the said Decision had become final and executory which renders the Petitions moot and academic. Accordingly, TTAI moved for the dismissal of the instant petitions before this Court.

Issues

The main issues for resolution are:

(a) Whether the resolution of the Petitions has become moot in view of the decision on the merits in Civil Case No. Q-08-63757;

(b) Whether the Petitions should be dismissed for failure of Jorgenetics to comply with the rules on verification and certification of non-forum shopping;

(c) Whether the February 4, 2010 Order became final and executory upon the lapse of the 15-day period to file an ordinary appeal under Rule 41 of the Rules of Civil Procedure;

(d) Whether Jorgenetics, in filing an application for damages and motion for issuance of a writ of execution after the trial court's issuance of a decision dismissing the complaint for replevin, may be considered to have submitted itself to the jurisdiction of the trial court; and

(e) Whether the return of the hogs seized by virtue of the writ of replevin is proper.

Our Ruling

The Petitions are denied for lack of merit.

The instant Petitions have not been mooted despite the issuance of a decision on the merits in the main case.

Before the Court delves into the issues raised in the Petitions, We shall resolve first TTAI's Manifestation and Motion which seeks the dismissal of the Petitions for being moot and academic, in view of the favorable ruling on the merits TTAI secured in the main case which has become final and executory. In the said decision, the trial court declared TTAI as the rightful possessor of the livestock subject of the chattel mortgage in view of Jorgenetics' default in the payment of its obligations, and the eventual sale by public auction of the mortgaged property to respondent which were found by the trial court to be legitimate.[53]

An issue becomes moot when it ceases to present a justiciable controversy such that a determination thereof would be without practical value.[54] In such cases, there is "no actual substantial relief to which petitioner would be entitled to and which would be negated by the dismissal of the petition."[55] Courts will not determine questions that have become moot and academic because there is no longer any justiciable controversy to speak of. The judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.[56]

The crux of the controversy in the case at bench is whether the trial court has obtained jurisdiction over the person of petitioner or alternatively, whether the February 4, 2010 order of the trial court dismissing the complaint for lack of jurisdiction over petitioner had already become final and executory and thus may no longer be disturbed. In connection thereto, it must be stressed that any judgment rendered or any proceedings conducted by a court which has no jurisdiction over the person of the defendant is null and void.[57]

Thus, should the Court rule in favor of petitioner, the complaint for replevin will be dismissed and all proceedings conducted, including the decision on the merits invoked by respondent in its Manifestation and Motion, will be considered null and void. "A void judgment is in effect no judgment at all," and "[a]ll acts performed under it and all claims flowing out of it are void."[58] "The judgment is vulnerable to attack even when no appeal h as been taken," and "does not become final in the sense of depriving a party of [their] right to question its validity."[59]

Guided by the foregoing, We find that the Petitions are not moot as a favorable ruling to Jorgenetics will entail the setting aside of the trial court's judgment on the merits in view of lack of jurisdiction over its person.

The chairperson and president of a corporation may sign the verification and certification without need of board resolution. Moreover, lack of authority of a corporate officer to undertake an action on behalf of the corporation may be cured by ratification through the subsequent issuance of a board resolution.

TTAI contends that Mr. Romeo J. Jorge, the chairperson and president of petitioner, had no authority to file the Petition in G.R. No. 201044 on behalf of Jorgenetics at the time of the filing thereof, and that the belated submission of the Board Resolution indicating Mr. Jorge's authority and ratifying the filing of the Petition will not cure the defect.

We disagree.

In Cagayan Valley Drug Corp. v. Commissioner of Internal Revenue,[60] this Court ruled that certain officials or employees of a corporation can sign the verification and certification on its behalf without need of a board resolution, such as but not limited to the chairperson of the board of directors, the president of a corporation, the general manager or acting general manager, personnel officer, and an employment specialist in a labor case. Moreover, the "lack of authority of a corporate officer to undertake an action on behalf of the corporation may be cured by

ratification through the subsequent issuance of a board resolution, recognizing the validity of the action or the authority of the concerned officer."[61]

Given the foregoing, Mr. Jorge, as the chairperson and president of petitioner, is sufficiently authorized to sign the verification and certification on behalf of Jorgenetics. Any doubt on his authority to sign the verification and certification is likewise obviated by the secretary's certificate it submitted upon the orders of this Court, which ratified Mr. Jorge's authority to represent petitioner and file the Petition in G.R. No. 201044.

A variance in the date of the verification with the date of the Petition is not fatal to petitioner's case.

TTAI alleges that the Petition in G.R. No. 222691 should be dismissed outright, since the verification and certification of non-forum shopping was signed by Mr. Jorge and notarized a day prior to the date of the Petition.

This contention must fail.

The purpose of a verification in the petition is to secure an assurance that the allegations of a pleading are true and correct, are not speculative or merely imagined, and have been made in good faith. To achieve this purpose, the verification of a pleading is made through an affidavit or sworn statement, confirming that the affiant has read the pleading whose allegations are true and correct of the affiant's personal knowledge or based on authentic records.[62]

In connection thereto, a variance in the date of the verification with the date of the petition is not necessarily fatal to Jorgenetics' case since the variance does not necessarily lead to the conclusion that no verification was made, or that the verification was false. It does not necessarily contradict the categorical declaration made by Jorgenetics in its affidavit that its representatives read and understood the contents of the pleading.

To demand the litigants to read the very same document that is to be filed in court is too rigorous a requirement.

[W]hat the Rules require is for a party to read the contents of a pleading without any specific requirement on the form or manner in which the reading is to be done. [W]hat is important is that efforts were made to satisfy the objective of the Rule, that is, to ensure good faith and veracity i n the allegations of a pleading, thereby allowing the courts to act on the case with reasonable certainty that the petitioners' real positions have been pleaded.[63]

We find the verification and certification of non-forum shopping attached to the Petition in G.R. No 222691 sufficiently compliant in achieving the said objective.

An order dismissing an action for lack of jurisdiction over the parties to the case is cognizable under a special civil action for *certiorari*.

Jorgenetics asserts that the proper remedy to assail the February 4, 2010 Order of the trial court, which dismissed the complaint for replevin due to lack of jurisdiction over the person of defendant, is through an ordinary appeal under Section 1, Rule 41 of the Rules of Court. Thus, it claims that the 15-day period to file an appeal under Rule 41 had already lapsed and the February 4, 2010 Order had long become final and executory when TTAI filed a petition for *certiorari* to assail the same, and that the appellate court no longer had the power to reinstate the complaint in view of the finality of the said order.

We find no error in the ruling of the appellate court that a petition for *certiorari* under Rule 65 of the Rules of Court is the proper remedy to question the trial court's order dismissing the replevin case on the ground of lack of jurisdiction. An order granting a motion to dismiss on the ground that the court has no jurisdiction over the person of the defendant is without prejudice to the refiling of the same action or claim.[64] In connection thereto, Section 1, Rule 41 clearly provides that an order dismissing an action without prejudice may not be appealed via a Rule 41 petition, and must instead be assailed through a petition for *certiorari* under Rule 65:

SECTION 1. Subject of Appeal. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

x x x x

(h) An order dismissing an action without prejudice.

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65. (n) [Emphasis supplied]

Under the circumstances, the special civil action for *certiorari* under Rule 65 availed of by TTAI – and not an appeal via Rule 41 – was the correct remedy to challenge the February 4, 2010 Order, which dismissed the complaint for replevin for lack of jurisdiction.

Jorgenetics' insistence that the order of dismissal has become final and executory and may no longer be set aside by the court *a quo* must likewise fail. TTAI's timely filing of a Motion for Reconsideration over the order of dismissal and thereafter, a Rule 65 petition before the CA, clearly prevented the February 4, 2010 Order from becoming final and executory. To find otherwise would result in an anomalous situation where TTAI would be deprived of its right to file a petition for *certiorari* to assail the February 4, 2010 Order, which is a remedy clearly afforded to it under the Rules of Court.

Considering that the February 4, 2010 Order did not attain finality, We agree with the appellate court's ruling that the trial court acted in grave abuse of discretion in ordering the implementation of the February 4, 2010 Order, moreso because the court *a quo* already reversed and set aside the March 29, 2011 Decision in CA G.R. SP. No. 114682 at the time it ordered the implementation of the same.

Jorgenetics, in seeking to recover damages in the main action on the bond of the writ of replevin, is deemed to have voluntarily submitted to the jurisdiction of the court.

Jorgenetics alleges that the appellate court erred in finding that its filing of the Motion for the Issuance of a Writ of Execution with Application for Damages amounted to a voluntary submission to the trial court's jurisdiction.

We disagree.

Jurisdiction over the person of the defendant in civil cases is acquired by service of summons. However, "even without valid service of summons, a court may still acquire jurisdiction over the person of the defendant if the latter voluntarily appears before it."[65] "If the defendant knowingly does an act inconsistent with the right to object to the lack of personal jurisdiction as to [them], like voluntarily appearing in the action, [they are] deemed to have submitted [themselves] to the jurisdiction of the court."[66]

Thus, a defendant is deemed to have voluntarily submitted themselves to the jurisdiction of the court if they seek affirmative relief from the court. This includes the filing of motions to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration.[67]

We have likewise held that a party is deemed to have submitted themselves to the jurisdiction of the court when, after the opposing party sought the execution of the decision, they file a motion asking for the resetting of the hearing without reserving their continuing objection to the lower court's lack of jurisdiction over their person.[68] "[T]he active participation of a party in the proceedings is tantamount to an invocation of the court's jurisdiction and a willingness to abide by the resolution of the case, and will bar said party from later on impugning the court or body's jurisdiction."[69]

However, this rule is "tempered by the concept of conditional appearance, such that a party who makes a special appearance to challenge, among others, the court's jurisdiction over [their] person cannot be considered to have submitted to its authority x x x A special appearance operates as an exception to the general rule on voluntary appearance," but only when the defendant explicitly and unequivocably poses objections to the jurisdiction of the court over their person.[70]

Applying the foregoing principles to the instant case, the Court finds that Jorgenetics voluntarily submitted itself to the jurisdiction of the trial court when it filed a motion for the issuance of a writ of execution and an application for damages against the replevin bond without objecting to the jurisdiction of the trial court.

The Rules provide that an application for damages on the replevin bond shall only be claimed, ascertained, and granted in accordance with Section 20, Rule 57 of the Rules of Court, which provides:

SEC. 20. Claim for damages on account of illegal attachment. — If the judgment on the action be in favor of the party against whom attachment was issued, he may recover, upon the bond given or deposit made by the attaching creditor, any damages resulting from the attachment. Such damages may be awarded only upon application and after proper hearing, and shall be included in the final judgment. The application must be filed before the trial or before appeal is perfected or before the judgment becomes executory, with due notice to the attaching creditor and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof.

If the judgment of the appellate court be favorable to the party against whom the attachment was issued, he must claim damages sustained during the pendency of the appeal by filing an application with notice to the party in whose favor the attachment was issued or his surety or sureties, before the judgment of the appellate court becomes executory. The appellate court may allow the application to be heard and decided by the trial court. [Emphases supplied]

Under the said provision, an application for damages against the bond presupposes that a trial on the merits in the main case was conducted and the defendant obtained a favorable judgment from the court.[71] Moreover, the damages to which the defendant would be entitled to, if any, would require the conduct of a hearing. In other words, petitioner's act of filing an application for damages against the replevin bond in the same action is tantamount to

requesting the trial court to conduct a trial on the merits of the case and adjudicating rightful possession to Jorgenetics, and to thereafter conduct a hearing on Jorgenetics' application for damages. This is clearly an invocation of the court's jurisdiction and a willingness to abide by the resolution of the case. Hence, Jorgenetics is deemed to have submitted itself to the jurisdiction of the court.

Jorgenetics' assertion that it was merely invoking the residual authority of the trial court when it requested the latter to rule on its application for damages comes up empty. In Development Bank of the Philippines v. Carpio,[72] We clarified that a trial court acquires residual jurisdiction over a case once a trial on the merits has been conducted, the court renders judgment, and the aggrieved party appeals therefrom.

Hence, We ruled therein that the trial court may not be considered to have acquired residual jurisdiction over a replevin case if the complaint is dismissed without prejudice, and the trial court may not rule on the application for damages on the assumption that it has residual powers over the case:

The "residual jurisdiction" of the trial court is available at a stage in which the court is normally deemed to have lost jurisdiction over the case or the subject matter involved in the appeal. This stage is reached upon the perfection of the appeals by the parties or upon the approval of the records on appeal, but prior to the transmittal of the original records or the records on appeal. In either instance, the trial court still retains its so-called residual jurisdiction to issue protective orders, approve compromises, permit appeals of indigent litigants, order execution pending appeal, and allow the withdrawal of the appeal.

From the foregoing, it is clear that before the trial court can be said to have residual jurisdiction over a case, a trial on the merits must have been conducted; the court rendered judgment; and the aggrieved party appealed therefrom.

x x x x

Here, the RTC dismissed the replevin case on the ground of improper venue. Such dismissal is one without prejudice and does not bar the refiling of the same action; hence, it is not appealable. Clearly, the RTC did not reach, and could not have reached, the residual jurisdiction stage as the case was dismissed due to improper venue, and such order of dismissal could not be the subject of an appeal. Without the perfection of an appeal, let alone the unavailability of the remedy of appeal, the RTC did not acquire residual jurisdiction. Hence, it is erroneous to conclude that the RTC may rule on DBP's application for damages pursuant to its residual powers.[73] [Emphasis supplied]

Moreover, Jorgenetics argues that the trial court had yet to rule on its application for damages and motion for writ of execution at the time of filing of the petition for *certiorari* before the CA. Thus, it is erroneous to claim that the trial court committed grave abuse of discretion when there is no action yet that may be regarded as such at the time of the filing of CA G.R. SP. No. 114682. On the other hand, TTAI argues that the fact petitioner's application for damages was given due course amounts to grave abuse of discretion, as the trial court essentially recognized an affirmative relief, like the prayer for damages, from a party that it has no jurisdiction over.

We agree with TTAI. It is undisputed that at the time of the filing of the petition with the appellate court, the trial court already took cognizance of the application for damages by setting the hearing for the same and requiring the parties to file their respective pleadings thereto despite its previous order dismissing the case for replevin for lack of jurisdiction. And while the trial court had yet to rule on the application for damages at the time of the filing of the petition for *certiorari* with the appellate court, the records clearly show that the trial court, while CA G.R. SP. No. 114682 was pending, explicitly ruled that Jorgenetics was entitled to damages against the replevin bond despite its earlier order dismissing the complaint.

In any event, any doubt on the voluntary submission of Jorgenetics to the trial court's jurisdiction has been eliminated by the multiple affirmative reliefs it sought from the trial court as shown in the record, such as its urgent *ex-parte* motion for deposit of auction proceeds, motion for inhibition, and motion for writ of execution and/or writ of possession. These motions are clearly affirmative reliefs sought by Jorgenetics tantamount to voluntary submission to the jurisdiction of the trial court.

In light of the foregoing, We find that the CA did not commit any error in reinstating the complaint for replevin in view of Jorgenetics' active participation in the proceedings before the trial court, and in finding that the trial court committed grave abuse of discretion in taking cognizance of the application for damages despite its earlier order dismissing the complaint for lack of jurisdiction.

The issue on the validity and efficacy of the writ of replevin is mooted in view of the final and executory decision on the merits in the main case.

Finally, it may be noted that one of the issues raised by the parties in the G.R. No. 222691 is the validity and efficacy of the writ of replevin and in connection thereto, whether the return of the hogs seized by virtue of the writ, and as ordered in the trial court's October 18, 2012 and March 15, 2013 Orders, is proper. In view of the trial court's final

and executory decision in the main case adjudicating rightful possession to TTAI, We find the issue to be moot and academic.

Replevin is an action for the recovery of personal property. It is both a principal remedy and a provisional relief. When utilized as a principal remedy, the objective is to recover possession of personal property that may have been wrongfully detained by another. When sought as a provisional relief, it allows a plaintiff to retain the contested property during the pendency of the action.[74]

Being provisional and ancillary in character, the existence and efficacy of the writ of repl evin depends on the outcome of the case.[75] Ancillary writs are not causes of action in themselves, but mere adjuncts to the main suit with the sole object of preserving the status quo until the merits of the case can be heard.[76] An ancillary writ "cannot survive the main case of which it is an incident because an ancillary writ loses its force and effect after the decision in the main petition."[77]

Considering that a decision has already been rendered in the main case, adjudicating rightful possession of the livestock to TTAI, and which may be maintained in light of the Court's foregoing ruling that the trial court validly acquired jurisdiction over Jorgenetics, We find that any disposition by this Court on the validity and efficacy of the writ of replevin, which was merely ancillary to the main action, serves no practical purpose. Thus, a discussion on the said issue is moot and may be dispensed with.

WHEREFORE, the Petitions in G.R. No. 201044 and 222691 are **DENIED**. Accordingly, the March 29, 2011 Decision and February 29, 2012 Resolution of the Court of Appeals in CA-G.R. SP. No. 114682 and the October 29, 2014 Decision and January 8, 2016 Resolution in C.A.-G.R. SP No. 130075 are **AFFIRMED**.

SO ORDERED.

Leonen (Chairperson), Inting, Delos Santos and J. Lopez, JJ., concur.

Footnotes

[1] Rollo (G.R. No. 201044), Vol. I, pp. 39-54. Penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Mario V. Lopez (now a Member of the Court) and Edwin D. Sorongon.

[2] *Id.* at 74-76.

[3] Rollo (G.R. No. 222691), pp. 73-94; penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Hakim S. Abdulwahid and Ramon A. Cruz.

[4] *Id.* at 108-110.

[5] Rollo (G.R. No. 2222691), Vol. 1, pp. 111-117.

[6] Rollo (G.R. No. 201044), pp. 192-195.

[7] Rollo (G.R. No. 222691), p. 296

[8] *Id.* at 113.

[9] *Id.* at 115.

[10] Rollo (G.R. No. 201044), Vol. 1, pp. 205-206.

[11] *Id.* at 107-208.

[12] *Id.* at 209-217.

[13] *Id.* at 42.

[14] *Id.* at 189-190; penned by Presiding Judge Alexander S. Balut of Branch 76, Regional Trial Court, Quezon City.

[15] *Id.* at 190.

[16] *Id.* at 219-232.

[17] *Id.* at 233-235.

[18] *Id.* at 166, 299; Rollo (G.R. No. 222691), pp. 110.

[19] Rollo (G.R. No. 201044), Vol. 1, 158-188.

[20] *Id.* at 397-405.

[21] *Id.* at 342-343.

[22] *Id.* at 380.

[23] *Id.* at 395.

[24] *Id.* at 396.

[25] *Id.* at 397-405.

[26] *Id.* at 406-409.

[27] *Id.* at 423.

[28] *Id.* at 479-484.

[29] Rollo (G.R. No. 222691), p. 17.

[30] Rollo (G.R. No. 201044). Vol. 1, pp. 39-54.

[31] *Id.* at 54.

[32] *Id.* at 8-12.

[33] *Id.* at 14.

[34] *Id.* at 74-76.

[35] Rollo (G.R. No. 201044), Vol. 1, at 479-484.

[36] *Id.* at 486-492.

[37] Rollo (G.R. No. 201044), Vol. 2, pp. 571-578.

[38] Rollo (G.R. No. 222691), Vol. 1, pp. 213-222.

[39] *Id.*

[40] *Id.* at 221.

[41] *Id.* at 22.

[42] *Id.* at 223-229.

[43] *Id.* at 229.

[44] *Id.* at 228.

[45] *Id.* at 230-286.

[46] *Id.* at 93-94.

[47] *Id.* at 87.

[48] *Id.* at 73-94.

[49] *Id.* at 87-88.

[50] *Id.* at 108-111.

[51] *Id.* at 55-71.

[52] Rollo (G.R. No. 201044), Vol. 2, pp. 814-823.

[53] *Id.* at 829.

[54] Philippine Savings Bank v. Senate Impeachment Court, 699 Phil. 35-36 (2012).

[55] *Id.*, citing Gancho-on v. Secretary of Labor and Employment, 337 Phil. 654, 658 (1997).

[56] *Id.*, citing Sales v. Commission on Elections, 559 Phil. 593 (2007).

[57] Pacific Rehouse Corp. v. Court of Appeals, 730 Phil. 325, 344 (2014).

[58] Lingkod Manggagawa sa Rubberworld v. Rubberworld, 542 Phil. 203, 213 (2007)

[59] *Id.* at 213-214.

[60] 568 Phil. 572, 581 (2008).

[61] Fausto v. Multi Agri-Forest and Community Development Cooperative, 797 Phil. 259, 275 (2016).

[62] National Housing Authority v. Basa, Jr., 631 Phil. 471, 490 (2010).

[63] Peak Venture Corp. v. Heirs of Villareal, 747 Phil. 320, 331-333 (2014); Spouses Valmonte v. Alcala, 581 Phil. 505, 513-516 (2008).

[64] Sections 1 (a) and 5, Rule 16 of the RULES OF COURT provide:

> SECTION 1. Grounds. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds: (a) That the court has no jurisdiction over the person of the defending party;
>
> x x x x
>
> SECTION 5. Effect of Dismissal. — Subject to the right of appeal, an order granting a motion to dismiss based on paragraphs (f), (h) and (i) of Section 1 hereof shall bar the refiling of the same action or claim. (n)

[65] Tujan-Militante v. Nustad, 811 Phil. 192, 197-198 (2017). See also Section 20, Rule 14 of the RULES OF COURT which provides:

> Section 20. Voluntary Appearance. — The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds of relief aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance.

[66] Carson Realty & Management Corp. v. Red Robin Security Agency, 805 Phil. 562, 577 (2017).

[67] United Coconut Planters Bank v. Spouses Sy, G.R. No. 204753, March 27, 2019.

[68] Cezar v. Ricafort-Bautista, 536 Phil. 1037, 1047-1048 (2006)

[69] Navida v. Dizon, 664 Phil. 283, 329 (2011).

[70] Carson Realty & Management Corp. v. Red Robin Security Agency, *supra* note 47, at 576-577, citing Philippine Commercial International Bank v. Spouses Dy, 606 Phil. 615 (2009).

[71] See also Section 9, Rule 60 of the RULES OF COURT which provides:

> Section 9. Judgment. — After trial of the issues the court shall determine who has the right of possession to and the value of the property and shall render judgment in the alternative for the delivery thereof to the party entitled to the same, or for its value in case delivery can not be made, and also for such damages as either party may prove, with costs. (9a) [Emphasis supplied]

[72] 805 Phil. 99 (2017).

[73] *Id.* at 108-111.

[74] Enriquez v. The Mercantile Insurance Co., Inc., G.R. No. 210950, August 15, 2018.