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THIRD DIVISION

[G.R. Nos. 188642 & 189425. October 17, 2016]

AGDAO LANDLESS RESIDENTS ASSOCIATION, INC., THE BOARD OF DIRECTORS OF AGDAO LANDLESS ASSOCIATION, INC., in their personal capacity namely: ARMANDO JAVONILLO, MA. ACELITA ARMENTANO, ALEX JOSOL, ANTONIA AMORADA, JULIUS ALINSUB, POMPENIANO ESPINOSA, JR., SALCEDO DE LA CRUZ, CLAUDIO LAO, CONSORCIO DELGADO, ROMEO CABILLO, RICARDO BACONG, RODOLFO GALENZOGA, BENJAMIN LAMIGO, and ASUNCION A. ALCANTARA, *petitioners, vs.* **ROLANDO MARAMION, LEONIDAS JAMISOLA, VIRGINIA CANOY, ELIZABETH GONZALES, CRISPINIANO QUIRE-QUIRE, ERNESTINO DUNLAO, ELLA DEMANDANTE, ELLA RIA DEMANDANTE, ELGIN DEMANDANTE, SATURNINA WITARA, VIRGILIO DAYONDON, MELENCIA MARAMION, ANGELICA PENKIAN, PRESENTACION TAN, HERNANI GREGORY, RUDY GIMARINO, VALENTIN CAMEROS, RODEL CAMEROS, ZOILO JABONETE, LUISITO TAN, JOSEPH QUIRE-QUIRE, ERNESTO DUNLAO, JR., FRED DUNLAO, LIZA MARAMION, CLARITA ROBILLA, RENATO DUNLAO and PRUDENCIO JUARIZA, JR.,** *respondents.*

[G.R. Nos. 188888-89. October 17, 2016]

ROLANDO MARAMION, LEONIDAS JAMISOLA, VIRGINIA CANOY, ERNESTINO DUNLAO, ELLA DEMANDANTE, ELLA RIA DEMANDANTE, ELGIN DEMANDANTE, SATURNINA WITARA, MELENCIA MARAMION, LIZA MARAMION, ANGELICA PENKIAN, PRESENTACION TAN, as substituted by his legal heirs: HERNANI GREGORY, RUDY

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GIMARINO, RODEL CAMEROS, VALENTIN CAMEROS, VIRGILIO DAYONDON, PRUDENCIO JUARIZA, JR., ZOILO JABONETE, LUISITO TAN, ERNESTINO DUNLAO, JR., FRED DUNLAO, CLARITA ROBILLA, and RENATO DUNLAO, *petitioners, vs.* **AGDAO LANDLESS RESIDENTS ASSOCIATION, INC., THE BOARD OF DIRECTORS OF AGDAO LANDLESS RESIDENTS ASSOCIATION, INC., in their personal capacity, namely: ARMANDO JAVONILLO, MA. ACELITA ARMENTANO, ALEX JOSOL, ANTONIA AMORADA, JULIUS ALINSUB, POMPENIANO ESPINOSA, JR., JACINTO BO-OC, HERMENIGILDO DUMAPIAS, SALCEDO DE LA CRUZ, CLAUDIO LAO, CONSORCIO DELGADO, ROMEO CABILLO, RICARDO BACONG, RODOLFO GALENZOGA, BENJAMIN LAMIGO, ROMEO DE LA CRUZ, ASUNCION ALCANTARA and LILY LOY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; FACTUAL FINDINGS MAY NOT BE REVIEWED THEREIN, FOR THE SUPREME COURT IS NOT A TRIER OF FACTS.— [O]nly questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court, since "the Supreme Court is not a trier of facts." It is not our function to review, examine and evaluate or weigh the probative value of the evidence presented. When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the recognized exceptions in jurisprudence.

2. MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; NON-STOCK CORPORATIONS; TERMINATION OF MEMBERSHIP; MEMBERSHIP

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SHALL BE TERMINATED IN THE MANNER AND FOR THE CASES PROVIDED IN THE ARTICLES OF CORPORATION OR THE BY-LAWS.— Section 91 of the Corporation Code of the Philippines (Corporation Code) provides that membership in a non-stock, non-profit corporation (as in petitioner ALRAI in this case) shall be terminated in the manner and for the cases provided in its articles of incorporation or the by-laws. Petitioners allege that the membership of respondents in ALRAI was terminated due to (a) non-payment of membership dues and (b) failure to consecutively attend meetings. However, petitioners failed to substantiate these allegations. x x x Even assuming that petitioners were able to prove these allegations, the automatic termination of respondents' membership in ALRAI is still not warranted. x x x Section 5 of the ALRAI Constitution does not state that the grounds relied upon by petitioners will cause the *automatic* termination of respondents' membership. Neither can petitioners argue that respondents' memberships in ALRAI were terminated under letter (c) of Section 5 x x x. Although termination of membership from ALRAI may be made by a majority of the members, the court *a quo* found that the "guideline (referring to Section 2, Article III of the ALRAI Constitution) was not followed, hence, complainants' ouster from the association was illegally done." x x x [T]he "notice for the July 29, [2001] meeting where the general membership of ALRAI approved the expulsion of some of the respondents was short of the three (3)-day notice requirement. More importantly, the petitioners have failed to adduce evidence showing that the expelled members were indeed notified of any meeting or investigation proceeding where they are given the opportunity to be heard prior to the termination of their membership."

3. **ID.; ID.; ID.; ID.; ID.; WHEN THE ACTIONS OF THE MEMBERS MAY WARRANT ONLY THE PENALTY OF SUSPENSION OR FINE, THE AUTOMATIC TERMINATION OF MEMBERSHIP CONSTITUTES AN INFRINGEMENT OF THEIR CONSTITUTIONAL RIGHTS TO DUE PROCESS AND IS NOT IN ACCORD WITH THE PRINCIPLES ESTABLISHED IN ARTICLE 19 OF THE CIVIL CODE.—** The requirement of due notice becomes more essential especially so since the ALRAI Constitution provides for the penalties to be imposed in cases

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where any member is found to be in arrears in payment of contributions, or is found to be absent from any meeting without any justifiable cause. x x x [, pursuant to] Section 3, Article II and Section 3, Article III of the ALRAI Constitution x x x. Members proved to be in arrears in the payment of monthly dues, contributions, or assessments shall only be automatically suspended; while members who shall be absent from any meeting without any justifiable cause shall only be liable for a fine. Nowhere in the ALRAI Constitution does it say that the foregoing actions shall cause the automatic termination of membership. Thus, the CA correctly ruled that "respondents' expulsion constitutes an infringement of their constitutional right to due process of law and is not in accord with the principles established in *Article 19 of the Civil Code*, x x x."

4. **ID.; ID.; ID.; INDIVIDUAL SUIT AND DERIVATIVE SUIT, DISTINGUISHED.—** Individual suits are filed when the cause of action belongs to the stockholder personally, and not to the stockholders as a group, or to the corporation, *e.g.* denial of right to inspection and denial of dividends to a stockholder. If the cause of action belongs to a group of stockholders, such as when the rights violated belong to preferred stockholders, a class or representative suit may be filed to protect the stockholders in the group. A derivative suit, on the other hand, is one which is instituted by a shareholder or a member of a corporation, for and in behalf of the corporation for its protection from acts committed by directors, trustees, corporate officers, and even third persons. The whole purpose of the law authorizing a derivative suit is to allow the stockholders/members to enforce rights which are derivative (secondary) in nature, *i.e.*, to enforce a corporate cause of action.

5. **ID.; ID.; ID.; DERIVATIVE SUIT; REQUISITES; AN INDIVIDUAL SUIT MAY BE TREATED AS A DERIVATIVE SUIT WHEN THE OCCASION FOR THE STRICT APPLICATION OF THE RULE THAT A DERIVATIVE SUIT SHOULD BE BROUGHT TO PROTECT AND VINDICATE THE INTEREST OF THE CORPORATION DOES NOT OBTAIN UNDER THE CIRCUMSTANCES OF THE CASE.—** The nature of the action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is

entitled to recover upon all or some of the claims asserted therein. x x x In a strict sense, the first cause of action, and the reliefs sought, should have been brought through a derivative suit. The first cause of action pertains to the corporate right of ALRAI involving its corporate properties which it owned by virtue of the Deeds of Donation. In derivative suits, the real party-in-interest is the corporation, and the suing stockholder is a mere nominal party. A derivative suit, therefore, concerns "a wrong to the corporation itself." However, we liberally treat this case (in relation to the cause of action pertaining to ALRAI's corporate properties) as one pursued by the corporation itself, for the following reasons. First, the court *a quo* has jurisdiction to hear and decide this controversy. x x x [,pursuant to] Republic Act No. 8799 in relation to Section 5 of the Presidential Decree No. 902-A x x x. Second, we note that petitioners did not object to the institution of the case (on the ground that a derivative suit should have been lodged instead of an individual suit) in any of the proceedings before the court *a quo* or before the CA. Third, a reading of the complaint (in relation to the cause of action pertaining to ALRAI's corporate properties) shows that respondents do not pray for reliefs for their personal benefit; but in fact, for the benefit of the ALRAI x x x. The reliefs sought show that the complaint was filed ultimately to curb the alleged mismanagement of ALRAI's corporate properties. x x x In this case, the reliefs sought do not entail the premature distribution of corporate assets. On the contrary, the reliefs seek to preserve them for the corporate interest of ALRAI. Clearly then, any benefit that may be recovered is accounted for, not in favor of respondents, but for the corporation, who is the real party-in-interest. Therefore, the occasion for the strict application of the rule that a derivative suit should be brought in order to protect and vindicate the interest of the corporation does not obtain under the circumstances of this case. x x x Fourth, based on the records, we find that there is substantial compliance with the requirements of a derivative suit, to wit: a) [T]he 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) [H]e 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) [T]he cause of action actually devolves on the corporation, the wrongdoing or harm having

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been, or being caused to the corporation and not to the particular stockholder bringing the suit.

6. **ID.; ID.; ID.; CORPORATE POWERS AND CAPACITY; THE POWER OF A CORPORATION TO VALIDLY CONVEY ANY OF ITS REAL OR PERSONAL PROPERTIES MUST BE PURSUANT TO A LEGITIMATE CORPORATE PURPOSE, OR IS AT LEAST REASONABLE AND NECESSARY TO FURTHER ITS PURPOSE.—** The Corporation Code x x x tells us that the power of a corporation to validly grant or convey any of its real or personal properties is circumscribed by its primary purpose. It is therefore important to determine whether the grant or conveyance is pursuant to a legitimate corporate purpose, or is at least reasonable and necessary to further its purpose. Based on the records of this case, we find that the transfers of the corporate properties to Javonillo, Armentano, Dela Cruz, Alcantara and Loy are bereft of any legitimate corporate purpose, nor were they shown to be reasonably necessary to further ALRAI's purposes. This is principally because, x x x petitioners "personally benefitted themselves by allocating among themselves vast track of lands at the dire expense of the landless general membership of the Association."

7. **ID.; ID.; ID.; DEALINGS OF DIRECTORS, TRUSTEES OR OFFICERS WITH THE CORPORATION; THE DIRECTORS OR TRUSTEES AND OTHER OFFICERS OF A CORPORATION OCCUPY A FIDUCIARY RELATION TOWARDS IT, AND CANNOT BE ALLOWED TO CONTRACT WITH THE CORPORATION, DIRECTLY OR INDIRECTLY, OR TO SELL PROPERTY TO IT, OR PURCHASE PROPERTY FROM IT, WHEN THEY ACT BOTH FOR THE CORPORATION AND FOR THEMSELVES.—** The lack of legitimate corporate purpose is even more emphasized when Javonillo and Armentano, as a director and an officer of ALRAI, respectively, violated the fiduciary nature of their positions in the corporation. x x x Being the corporation's agents and therefore, entrusted with the management of its affairs, the directors or trustees and other officers of a corporation occupy a fiduciary relation towards it, and cannot be allowed to contract with the corporation, directly or indirectly, or to sell property to it, or purchase property from it, where they act both for the corporation and for themselves.

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One situation where a director may gain undue advantage over his corporation is when he enters into a contract with the latter.

APPEARANCES OF COUNSEL

Velasco Caranto & De Real Law Offices for petitioners Agdao Landless Residents Association, Inc., *et al.*

The Law Firm of Uy Cruz Lo & Associates for respondent Lily Loy.

Suelto Delgra Claudio Cosape Quilatan & Associates for respondent Rolando Maramion, *et al.*

D E C I S I O N

JARDELEZA, *J.*:

These are consolidated petitions for review on *certiorari* assailing the Court of Appeals' (CA) Decision[1] and Resolution[2] dated November 24, 2008 and June 19, 2009, respectively, in CA-G.R. SP No. 01858-MIN and CA-G.R. SP No. 01861-MIN. The CA affirmed with modification the Decision[3] of the Regional Trial Court (court *a quo*) dated July 11, 2007 which ruled in favor of respondents.

The Parties

Petitioners are Agdao Landless Residents Association, Inc. (ALRAI), a non-stock, non-profit corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines,[4] and its board of directors,[5] namely, Armando Javonillo (Javonillo), Ma. Acelita Armentano (Armentano), Alex

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[1] *Rollo* (G.R. Nos. 188642 & 189425), pp. 50-76.

[2] *Id*. at 79-83.

[3] *Id*. at 230-238.

[4] RTC records, Vol. VIII, p. 9. See also *rollo* (G.R. Nos. 188642 & 189425), pp. 53, 355.

[5] Hermenigildo Dumapias and Jacinto Bo-oc were not included as petitioners.

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Josol, Salcedo de la Cruz, Jr., Claudio Lao, Antonia Amorada, Julius Alinsub, Pompeniano Espinosa, Consorcio Delgado, Romeo Cabillo, Benjamin Lamigo, Ricardo Bacong, Rodolfo Galenzoga, and Asuncion Alcantara (Alcantara).[6] Respondents are allegedly ousted members of ALRAI, namely, Rolando Maramion, Leonidas Jamisola, Virginia Canoy (Canoy), Elizabeth Gonzales, Crispiniano Quire-Quire, Ernestino Dunlao, Ella Demandante, Ella Ria Demandante, Elgin Demandante, Saturnina Witara (Witara), Virgilio Dayondon (Dayondon), Melencia Maramion, Angelica Penkian (Penkian), Presentacion Tan, Hernani Gregory (Gregory), Rudy Gimarino (Gimarino), Valentin Cameros, Rodel Cameros (Cameros), Zoilo Jabonete, Luisito Tan (Tan), Joseph Quire-Quire, Ernestino Dunlao, Jr., Fred Dunlao, Liza Maramion, Clarita Robilla (Robilla), Renato Dunlao and Prudencio Juariza, Jr. (Juariza).[7]

The Antecedents

Dakudao & Sons, Inc. (Dakudao) executed six Deeds of Donation[8] in favor of ALRAI covering 46 titled lots (donated lots).[9] One Deed of Donation[10] prohibits ALRAI, as donee, from partitioning or distributing individual certificates of title of the donated lots to its members, within a period of five years from execution, unless a written authority is secured from Dakudao.[11]

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[6] *Rollo* (G.R. Nos. 188642 & 189425), p. 53.

[7] *Id.*

[8] All notarized on September 2, 1999.

[9] *Rollo* (G.R. Nos. 188642 & 189425), pp. 84-112.

[10] This Deed of Donation covers the following titles: TCT Nos. T-41344 to T-41360, TCT Nos. T-41362 to T-41364, TCT Nos. T-41367 to T-41369, TCT Nos. T-41371 to T-41373, TCT No. T-41375, TCT Nos. T-297814 to T-297820, TCT No. T-297810, TCT No. T-297812 and TCT No. T- (*sic*). *Id.* at 84-95.

[11] The specific provision provides:

NOW, THEREFORE, for and in consideration of the foregoing premises, and as an act of liberality and generosity, the DONOR hereby voluntarily and freely gives, transfers, and conveys by way of donation unto said DONEE, all of the described parcels of land, subject to the terms and conditions hereinafter set forth:

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A violation of the prohibition will render the donation void, and title to and possession of the donated lot will revert to Dakudao.[12] The other five Deeds of Donation do not provide for the five-year restriction.

In the board of directors and stockholders meetings held on January 5, 2000 and January 9, 2000, respectively, members of ALRAI resolved to directly transfer 10 of the donated lots to individual members and non-members of ALRAI.[13] Transfer Certificate of Title (TCT) Nos. T-62124 (now T-322968), T-297811 (now TCT No. T-322966), T-297813 (now TCT No. T-322967) and T-62126 (now TCT No. T-322969) were transferred to Romeo Dela Cruz (Dela Cruz). TCT Nos. T-41374 (now TCT No. T-322963) and T-41361 (now TCT No. T-322962) were transferred to petitioner Javonillo, the president of ALRAI. TCT Nos. T-41365 (now TCT No. T-322964) and T-41370 (now TCT No. T-322964) were transferred to petitioner Armentano,

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1. to attest that the members of the DONEE are really in need of home lots for residential purposes, thereby preventing land speculation, the certificate of title of the aforementioned parcels of land shall be registered in the name of the DONEE, and **the latter is prohibited from partitioning or distributing individual certificates of title of the aforementioned parcels of land to its members, within a period of FIVE (5) YEARS from execution hereof, unless a written authority is secured from the DONOR**;

x x x x x x x x x

5. that [non-compliance] with, or violation of, the conditions [set forth] in this DEED OF DONATION by the DONEE shall render the Donation VOID, and title to and possession of the property shall revert to the DONOR. *Id.* at 93. Emphasis supplied.

[12] *Id.*

[13] *Rollo* (G.R. Nos. 188642 & 189425), pp. 219-221. The Resolution states:

That the herein irrevocable confirmation is made in recognition of, and gratitude for the outstanding services rendered by said, Mr. Romeo de la Cruz, as provider of instant loans and financial assistance, Mrs. Asuncion Alcantara, wife of our able counsel, Atty. Pedro Alcantara, Mr. Armando Javonillo, our tireless President and Mrs. Acelita Armentano, our tactful, courageous, and equally tireless Secretary, without whose efforts and sacrifices to acquire a portion of the realty of Dacudao & Sons, Inc., would not have been attained[.]

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the secretary of ALRAI. TCT Nos. T-41367 (now TCT No. T-322971) and T-41366 were transferred to petitioner Alcantara, the widow of the former legal counsel of ALRAI. The donated lot covered by TCT No. T-41366 (replaced by TCT No. T-322970) was sold to Lily Loy (Loy) and now covered by TCT No. T-338403.[14]

Respondents filed a Complaint[15] against petitioners. Respondents alleged that petitioners expelled them as members of ALRAI, and that petitioners are abusing their powers as officers.[16] Respondents further alleged that petitioners were engaged in the following anomalous and illegal acts: (1) requiring ALRAI's members to pay exorbitant arrear fees when ALRAI's By-Laws only set membership dues at ₱1.00 per month;[17] (2) partially distributing the lands donated by Dakudao to some officers of ALRAI and to some non-members in violation of the Deeds of Donation;[18] (3) illegally expelling them as members of ALRAI without due process;[19] and (4) being unable to show the books of accounts of ALRAI.[20] They also alleged that Loy (who bought one of the donated lots from Alcantara) was a buyer in bad faith, having been aware of the status of the land when she bought it.[21]

Thus, respondents prayed for: (1) the restoration of their membership to ALRAI; (2) petitioners to stop selling the donated lands and to annul the titles transferred to Javonillo, Armentano, Dela Cruz, Alcantara and Loy; (3) the production of the accounting books of ALRAI and receipts of payments from

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[14] *Id.* at 69-70.

[15] *Id.* at 16, 153-169. Respondents amended their Complaint four times. The court *a quo*, however, denied the fourth amendment of the Complaint.

[16] *Id*. at 155.

[17] *Id*. at 158.

[18] *Id*. at 158-160.

[19] *Id*. at 161.

[20] *Id*. at 163.

[21] *Id*. at 162.

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ALRAI's members; (4) the accounting of the fees paid by ALRAI's members; and (5) damages.[22]

In their Answer,[23] petitioners alleged that ALRAI transferred lots to Alcantara as attorney's fees ALRAI owed to her late husband, who was the legal counsel of ALRAI.[24] On the other hand, Javonillo and Armentano, as president and secretary of ALRAI, respectively, made a lot of sacrifices for ALRAI, while Dela Cruz provided financial assistance to ALRAI.[25] Petitioners also alleged that respondents who are non-members of ALRAI have no personality to sue. They also claimed that the members who were removed were legally ousted due to their absences in meetings.[26]

The Ruling of the RTC

On July 11, 2007, the court *a quo* promulgated its Decision,[27] the decretal portion of which reads:

> After weighing the documentary and testimonial evidence presented, as well as the arguments propounded by the counsels, this Court tilts the scale of justice in favor of complainants and hereby grants the following:
>
> 1. Defendants are enjoined from disposing or selling further the donated lands to the detriment of the beneficiary-members of the Association;
>
> 2. The Complainants and/or the ousted members are hereby restored to their membership with ALRAI, and a complete list of all bona fide members should be made and submitted before this Court;

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[22] *Id*. at 165.

[23] *Id*. at 170-176.

[24] *Id*. at 172.

[25] *Id*.

[26] *Rollo* (G.R. Nos. 188642 & 189425), pp. 173-174.

[27] *Id.* at 230-238.

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3. The Register of Deeds of the City of Davao is directed to annul the Land Titles transferred to Armando Javonillo, Ma. Acelita Armentano, Romeo dela Cruz, Asuncion Alcantara and Lily Loy with TCT Nos. T-322962, T-322963, T-322964, T-322965, T-322966, T-322967, T-322968, T-322969, T-322971 and T-338403 (formerly T-322970), respectively; and to register said titles to the appropriate donee provided in the Deeds of Donation; and

4. Defendants are further directed to produce all the Accounting Books of the Association, receipts of the payments made by all the members, and for an accounting of the fees paid by the members from the time of its incorporation up to the present;

5. Moral, exemplary and attorney's fees being unsubstantiated, the same cannot be given due course; and

6. Defendants are ordered to shoulder the costs of suit.

SO ORDERED.[28]

The court *a quo* treated the case as an intra-corporate dispute.[29] It found respondents to be *bona fide* members of ALRAI.[30] Being *bona fide* members, they are entitled to notices of meetings held for the purpose of suspending or expelling them from ALRAI.[31] The court *a quo* however found that respondents were expelled without due process.[32] It also annulled all transfers of the donated lots because these violated the five-year prohibition under the Deeds of Donation.[33] It also found Loy a purchaser in bad faith.[34]

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[28] *Id*. at 237-238.

[29] *Id*. at 231.

[30] *Id*. at 235.

[31] *Id*. at 235-236.

[32] *Id*. at 236.

[33] *Id*.

[34] *Rollo* (G.R. Nos. 188642 & 189425), pp. 236-237.

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Both Loy and petitioners filed separate appeals with the CA. Loy's appeal was docketed as CA-G.R. SP No. 01858;[35] while petitioners' appeal was docketed as CA-G.R. SP No. 1861.[36] In its Resolution[37] dated October 19, 2007, the CA ordered the consolidation of the appeals.

The Ruling of the Court of Appeals

The CA affirmed with modification the court *a quo*'s Decision. The decretal portion of the CA Decision[38] dated November 24, 2008 reads:

> **WHEREFORE**, the consolidated petitions are **PARTLY GRANTED**. The assailed Decision dated July 11, 2007 of the Regional Trial Court (RTC), Eleventh (11th) Judicial Region, Branch No. 10 of Davao City in *Civil Case No. 29,047-02* is hereby **AFFIRMED** with **MODIFICATION**.
>
> The following Transfer Certificates of Title are declared **VALID**:
>
> 1. **TCT Nos. T-322966, T-322967, T-322968 and T-322969** in the name of petitioner Romeo C. Dela Cruz; and
>
> 2. **TCT No. T-338403** in the name of petitioner Lily Loy.
>
> The following Transfer Certificates of Title are declared **VOID**:
>
> 1. **TCT Nos. T-322963** and **T-322962** in the name of Petitioner Armando Javonillo;

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[35] CA *rollo*, pp. 17-45.

[36] *Rollo* (G.R. Nos. 188642 & 189425), pp. 239-258.

[37] CA *rollo*, pp. 134-136.

[38] *Rollo* (G.R. Nos. 188642 & 189425), pp. 50-76. Penned by Associate Justice Mario V. Lopez, with the concurrence of Associate Justice Romulo V. Borja and Associate Justice Elihu A. Ybañez of the 21st Division of the Court of Appeals, Cagayan De Oro City.

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2. **TCT Nos. T-322964** and **T-322965** in the name of petitioner Ma. Acelita Armentano; and

3. **TCT No. T-322971** in the name of petitioner Asuncion A. Alcantara.

Petitioners who are members of ALRAI may inspect all the records and books of accounts of ALRAI and demand accounting of its funds in accordance with *Section 1, Article VII* and *Section 6, Article V* of ALRAI's *Constitution and By-Laws*.

SO ORDERED.[39]

Under Section 2, Article III of ALRAI's Amended Constitution and By-Laws (ALRAI Constitution), the corporate secretary should give written notice of all meetings to all members at least three days before the date of the meeting.[40] The CA found that respondents were not given notices of the meetings held for the purpose of their termination from ALRAI at least three days before the date of the meeting.[41] Being existing members of ALRAI, respondents are entitled to inspect corporate books and demand accounting of corporate funds in accordance with Section 1, Article VII and Section 6, Article V of the ALRAI Constitution.[42]

The CA also noted that among the donated lots transferred, only one [under TCT No. T-41367 (now TCT No. 322971) and transferred to Alcantara] was covered by the five-year prohibition.[43] Although petitioners attached to their Memorandum[44] dated November 19, 2007 a Secretary's Certificate[45] of Dakudao resolving to remove the restriction from the land covered by TCT No. T-41367, the CA did not

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[39] *Id*. at 75. Emphasis in the original.

[40] *Id*. at 66.

[41] *Id*.

[42] *Rollo* (G.R. Nos. 188642 & 189425), p. 67.

[43] *Id*. at 69-70.

[44] *Rollo* (G.R. Nos. 188888-89), pp. 503-519.

[45] *Id.* at 558-559.

take this certificate into consideration because petitioners never mentioned its existence in any of their pleadings before the court *a quo*. Thus, without the required written authority from the donor, the CA held that the disposition of the land covered by TCT No. T-41367 is prohibited and the land's subsequent registration under TCT No. T-322971 is void.[46]

However, the CA nullified the transfers made to Javonillo and Armentano because these transfers violated Section 6 of Article IV of the ALRAI Constitution. Section 6 prohibits directors from receiving any compensation, except for *per diems*, for their services to ALRAI.[47] The CA upheld the validity of the transfers to Dela Cruz and Alcantara[48] because the ALRAI Constitution does not prohibit the same. The CA held that as a consequence, the subsequent transfer of the lot covered by TCT No. T-41366 to Loy from Alcantara was also valid.[49]

Both parties filed separate motions for reconsideration with the CA but these were denied in a Resolution[50] dated June 19, 2009.

Thus, the parties filed separate petitions for review on *certiorari* under Rule 45 of the Rules of Court with this Court. In a Resolution[51] dated September 30, 2009, we resolved to consolidate the petitions considering they assail the same CA Decision and Resolution dated November 24, 2008 and June 19, 2009, respectively. The petitions also involve the same parties and raise interrelated issues.

The Issues

Petitioners raise the following issues for resolution of the Court, to wit:

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[46] *Rollo* (G.R. Nos. 188642 & 189425), p. 72.

[47] *Id*. at 72-74.

[48] *Id.* at 74; pertaining only to TCT No. T-41366 (now TCT No. T-322970).

[49] *Id*.

[50] *Rollo* (G.R. Nos. 188642 & 189425), pp. 79-83.

[51] *Id*. at 405-406.

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1. Whether respondents should be reinstated as members of ALRAI; and

2. Whether the transfers of the donated lots are valid.

Our Ruling

We find the petition partly meritorious.

I. Legality of respondents' termination

Petitioners argue that respondents were validly dismissed for violation of the ALRAI Constitution particularly for non-payment of membership dues and absences in the meetings.[52]

Petitioners' argument is without merit. We agree with the CA's finding that respondents were illegally dismissed from ALRAI.

We stress that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court, since "the Supreme Court is not a trier of facts."[53] It is not our function to review, examine and evaluate or weigh the probative value of the evidence presented.

When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unlesss the case falls under any of the recognized exceptions in jurisprudence.[54]

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[52] *Id.* at 31.

[53] *New Sampaguita Builders Construction, Inc. v. Philippine National Bank*, G.R. No. 148753, July 30, 2004, 435 SCRA 565, 580, citing *Far East Bank & Trust Co. v. Court of Appeals*, G.R. No. 123569, April 1, 1996, 256 SCRA 15, 18.

[54] The recognized exceptions are the following:

(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;

(2) When the inference made is manifestly mistaken, absurd or impossible;

(3) Where there is a grave abuse of discretion;

(4) When the judgment is based on a misapprehension of facts;

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The court *a quo* held that respondents are *bona fide* members of ALRAI.[55] This finding was not disturbed by the CA because it was not raised as an issue before it and thus, is binding and conclusive on the parties and upon this Court.[56] In addition, both the court *a quo* and the CA found that respondents were illegally removed as members of ALRAI. Both courts found that in terminating respondents from ALRAI, petitioners deprived them of due process.[57]

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(5) When the findings of fact are conflicting;

(6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;

(7) When the findings are contrary to those of the court;

(8) When the findings of fact are conclusions without citation of specific evidence on which they are based;

(9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and

(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc., G.R. No. 190515, June 6, 2011, 650 SCRA 656, 660.

[55] *Rollo* (G.R. Nos. 188642 & 189425), p. 235. The RTC held:

It was established from the extant records that complainants are bona fide members of the association. As such, they are entitled to be notified of any action or change in their status, moreso, when it involves their suspension, in a meeting duly held for that purpose. x x x

[56] *Bank of the Philippine Islands v. Leobrera*, G.R. Nos. 137147-48, November 18, 2003, 416 SCRA 15, 18-19. We note that petitioners did not raise this issue in their appeal before the CA, nor in their Memorandum filed with the CA. [See CA Petition and Memorandum; *Rollo* (G.R. Nos. 188642 & 189425), pp. 249-250.] This is the reason why the CA proceeded to resolve the issue of whether respondents were legally ousted from ALRAI, an issue which presumes that all respondents were previously members of ALRAI. *Rollo* (G.R. Nos. 188642 & 189425), p. 65.

[57] *Rollo* (G.R. Nos. 188642 & 189425), pp. 67, 235-236.

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Section 91[58] of the Corporation Code of the Philippines (Corporation Code)[59] provides that membership in a non-stock, non-profit corporation (as in petitioner ALRAI in this case) shall be terminated in the manner and for the cases provided in its articles of incorporation or the by-laws.

In turn, Section 5, Article II of the ALRAI Constitution[60] states:

> Sec. 5. – Termination of Membership – Membership may be lost in any of the following: a) **Delinquent in the payment of monthly dues;** b) **failure to [attend] any annual or special meeting of the association for three consecutive times without justifiable cause,** and c) expulsion may be exacted by majority vote of the entire members, on causes which herein enumerated: 1) Act and utterances which are derogatory and harmful to the best interest of the association; 2) Failure to attend any annual or special meeting of the association for six (6) consecutive months, which shall be construed as lack of interest to continue his membership, and 3) any act to conduct which are contrary to the objectives, purpose and aims of the association as embodied in the charter[.][61]

Petitioners allege that the membership of respondents in ALRAI was terminated due to (a) non-payment of membership dues and (b) failure to consecutively attend meetings.[62] However, petitioners failed to substantiate these allegations. In fact, the court *a quo* found that respondents submitted several receipts showing their compliance with the payment of monthly dues.[63] Petitioners likewise

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[58] Section 91 of the Corporation Code provides:

> Sec. 91. *Termination of membership.*— **Membership shall be terminated in the manner and for the causes provided in the articles of incorporation or the by-laws.** Termination of membership shall have the effect of extinguishing all rights of a member in the corporation or in its property, unless otherwise provided in the articles of incorporation or the by-laws. (Emphasis supplied.)

[59] *Batas Pambansa Bilang* 68.

[60] *Rollo* (G.R. Nos. 188642 & 189425), pp. 356-360.

[61] *Id*. at 356. Emphasis supplied.

[62] *Id*. at 31.

[63] *Id*. at 235-236.

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failed to prove that respondents' absences from meetings were without any justifiable grounds to result in the loss of their membership in ALRAI.

Even assuming that petitioners were able to prove these allegations, the automatic termination of respondents' membership in ALRAI is still not warranted. As shown above, Section 5 of the ALRAI Constitution does not state that the grounds relied upon by petitioners will cause the *automatic* termination of respondents' membership. Neither can petitioners argue that respondents' memberships in ALRAI were terminated under letter (c) of Section 5, to wit:

> x x x c) expulsion may be exacted by majority vote of the entire members, on causes which herein enumerated: 1) Act and utterances which are derogatory and harmful to the best interest of the association; 2) Failure to attend any annual or special meeting of the association for six (6) consecutive months, which shall be construed as lack of interest to continue his membership, and 3) any act to conduct which are contrary to the objectives, purpose and aims of the association as embodied in the charter; x x x[64]

Although termination of membership from ALRAI may be made by a majority of the members, the court *a quo* found that the "guideline (referring to Section 2, Article III of the ALRAI Constitution) was not followed, hence, complainants' ouster from the association was illegally done."[65] The court *a quo* cited Section 2, Article III of the ALRAI Constitution which provides, thus:

> Sec. 2. – Notice – The Secretary shall give or cause to be given written notice of all meetings, regular or special to all members of the association at least three (3) days before the date of each meetings either by mail or personally. Notice for special meetings shall specify the time and the purposes or purpose for which it was called; x x x[66]

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[64] *Id.* at 356.

[65] *Id.* at 236.

[66] *Id.* at 236, 357.

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The CA concurred with the finding of the court *a quo*.[67] The CA noted that the evidence presented revealed that the General Meeting for the termination of membership was to be held on July 29, 2001, at 2 o'clock in the afternoon; but the Notice to all officers and members of ALRAI informing them about the General Meeting appeared to have been signed by ALRAI's President only on July 27, 2001.[68] Thus, the CA held that the "notice for the July 29, [2001] meeting where the general membership of ALRAI approved the expulsion of some of the respondents was short of the three (3)-day notice requirement. More importantly, the petitioners have failed to adduce evidence showing that the expelled members were indeed notified of any meeting or investigation proceeding where they are given the opportunity to be heard prior to the termination of their membership."[69]

The requirement of due notice becomes more essential especially so since the ALRAI Constitution provides for the penalties to be imposed in cases where any member is found to be in arrears in payment of contributions, or is found to be absent from any meeting without any justifiable cause. Section 3, Article II and Section 3, Article III of the ALRAI Constitution provide, to wit:

Article II

x x x x x x x x x

Sec. 3. - Suspension of members – Any member who shall be six (6) months in arrears in the payment of monthly dues or additional contributions or assessments shall be automatically suspended and may be reinstated only upon payment of the corresponding dues in arrears or additional contributions and after approval of the board of Directors.[70]

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[67] *Id*. at 65.

[68] *Id*. at 66, 195. The CA Decision states that the Notice was signed on July 27, 2007, however, it appears in the Notice that the President signed it on July 27, 2001.

[69] *Id*. at 66.

[70] *Id.* at 356.

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x x x x x x x x x

Article III

x x x x x x x x x

Sec. 3. – Any member who shall be absent from any meeting without justifiable causes shall be liable to a fine of Two Pesos (₱ 2.00);[71]

Clearly, members proved to be in arrears in the payment of monthly dues, contributions, or assessments shall only be automatically suspended; while members who shall be absent from any meeting without any justifiable cause shall only be liable for a fine. Nowhere in the ALRAI Constitution does it say that the foregoing actions shall cause the automatic termination of membership. Thus, the CA correctly ruled that "respondents' expulsion constitutes an infringement of their constitutional right to due process of law and is not in accord with the principles established in *Article 19 of the Civil Code*, x x x."[72]

There being no valid termination of respondents' membership in ALRAI, respondents remain as its existing members.[73] It follows that as members, respondents are entitled to inspect the records and books of accounts of ALRAI subject to Section 1, Article VII[74] of ALRAI's Constitution, and they can demand the accounting of its funds in accordance with Section 6, Article V of the ALRAI Constitution.[75] In addition,

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[71] *Id.* at 357.

[72] *Id*. at 67.

[73] *Id*.

[74] Section 1, Article VII of the ALRAI Constitution provides:

Sec. 1 – Inspection of Accounts – All the records and books of accounts of the association shall be open for inspection by the Board of Directors at all times. The members of the association may conduct such inspection of records and books of accounts at reasonable time during office hours of any business day. *Rollo* (G.R. Nos. 188642 & 189425), p. 360.

[75] Section 6, Article V of the ALRAI Constitution provides:

Sec. 6. – The Auditor shall x x x periodically examine and audit the Book of Accounts of the association, its assets and liabilities, require the

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Sections 74[76] and 75[77] of the Corporation Code also sanction the right of respondents to inspect the records and books of accounts of ALRAI and demand the accounting of its funds.

II. On the validity of the donated lots

We modify the decision of the CA.

At the onset, we find that the cause of action and the reliefs sought in the complaint pertaining to the donated lands (ALRAI's corporate property) strictly call for the filing of a derivative suit, and not an individual suit which respondents filed.

Individual suits are filed when the cause of action belongs to the stockholder personally, and not to the stockholders as a group, or to the corporation, *e.g.* denial of right to inspection and denial of dividends to a stockholder. If the cause of action belongs to a group of stockholders, such as when the rights violated belong to preferred stockholders, a class or representative suit may be filed to protect the stockholders in the group.[78]

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production of supporting papers in all cases of income and disbursements; x x x. *Id*. at 359.

[76] Section 74 of the Corporation Code provides:

Sec. 74. *Books to be kept; stock transfer agent*. – x x x

The records of all business transactions of the corporation and the minutes of any meetings shall be open to inspection by any director, trustee, stockholder or member of the corporation at reasonable hours on business days and he may demand, in writing, for a copy of excerpts from said records or minutes, at his expense.

x x x x x x x x x

[77] Section 75 of the Corporation Code provides:

Sec. 75. *Right to financial statements.* – Within ten (10) days from receipt of a written request of any stockholder or member, the corporation shall furnish to him its most recent financial statement, which shall include a balance sheet as of the end of the last taxable year and a profit or loss statement for said taxable year, showing in reasonable detail its assets and liabilities and the result of its operations.

x x x x x x x x x

[78] *Villamor, Jr. v. Umale*, G.R. Nos. 172843 & 172881, September 24, 2014, 736 SCRA 325, 348.

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A derivative suit, on the other hand, is one which is instituted by a shareholder or a member of a corporation, for and in behalf of the corporation for its protection from acts committed by directors, trustees, corporate officers, and even third persons.[79] The whole purpose of the law authorizing a derivative suit is to allow the stockholders/members to enforce rights which are derivative (secondary) in nature, *i.e.*, to enforce a corporate cause of action.[80]

The nature of the action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.[81]

In this case, the complaint alleged, thus:

FIRST CAUSE OF ACTION

9. Sometime in 2001, Complainants accidentally discovered that portions of the aforementioned donated lands were partially distributed by the Officers of said association, AMONG THEMSELVES, without knowledge of its members.

x x x x x x x x x

11. Then there was illegal partial distribution of the donated lands. Not only the President and Secretary of the Association, but also some personalities who are not members of the association and who themselves own big tracts of land, are the recipients of the donated lands, which acts are contrary to the clear intents as indicated in the deed of donation. x x x[82]

In the same complaint, respondents prayed for the following reliefs, among others, to wit:

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[79] Villanueva and Villanueva-Tiansay, *Philippine Corporate Law*, 2013 ed., p. 474.

[80] *R.N. Symaco Trading Corporation v. Santos*, G.R. No. 142474, August 18, 2005, 467 SCRA 312, 328-329.

[81] *Ching v. Subic Bay Golf and Country Club, Inc.,* G.R. No. 174353, September 10, 2014, 734 SCRA 569, 581.

[82] *Rollo* (G.R. Nos. 188642 & 189425), pp. 157-158. Emphasis omitted.

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a) An Order for a writ of PRELIMINARY PROHIBITORY MANDATORY INJUNCTION to stop the Defendants from disposing the donated lands to the detriment of the beneficiary-members of the Association[.]

x x x x x x x x x

c) To cease and desist from selling donated lands subject of this case and to annul the titles transferred x x x.

d) To annul the Land Titles fraudulently and directly transferred from the Dacudao in the names of Defendants Javonillo, Armentano, Romeo de la Cruz and Alcantara, and subsequently to defendant Lily Loy in the name of Agdao Landless Association.[83]

In a strict sense, the first cause of action, and the reliefs sought, should have been brought through a derivative suit. The first cause of action pertains to the corporate right of ALRAI involving its corporate properties which it owned by virtue of the Deeds of Donation. In derivative suits, the real party-in-interest is the corporation, and the suing stockholder is a mere nominal party.[84]

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[83] *Id*. at 165. Underscoring in the original.

[84] *Villamor, Jr. v. Umale*, G.R. No. 172843, September 24, 2014, 736 SCRA 325, 341, citing *Hi-Yield Realty, Incorporated v. Court of Appeals*, G.R. No. 168863, June 23, 2009, 590 SCRA 548, 556, also citing *Filipinas Port Services, Inc. v. Go*, G.R. No. 161886, March 16, 2007, 518 SCRA 453, 471. See also *Cua, Jr. v. Tan*, G.R. Nos. 181455-56, December 4, 2009, 607 SCRA 645, 692-693, which held that:

> As the Supreme Court has explained: "A shareholder's derivative suit seeks to recover for the benefit of the corporation and its whole body of shareholders when injury is caused to the corporation that may not otherwise be redressed because of failure of the corporation to act. Thus, 'the action is derivative, i.e., in the corporate right, if the gravamen of the complaint is injury to the corporation, or to the whole body of its stock and property without any severance or distribution among individual holders, or it seeks to recover assets for the corporation or to prevent the dissipation of its assets.' x x x
>
> x x x Since "[s]hareholders own neither the property nor the earnings of the corporation," any damages that the plaintiff alleged that resulted from such loss of corporate profits "were incidental to the injury to the corporation." (Citations omitted, underscoring supplied.)

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A derivative suit, therefore, concerns "a wrong to the corporation itself."[85]

However, we liberally treat this case (in relation to the cause of action pertaining to ALRAI's corporate properties) as one pursued by the corporation itself, for the following reasons.

First, the court *a quo* has jurisdiction to hear and decide this controversy. Republic Act No. 8799,[86] in relation to Section 5 of Presidential Decree No. 902-A,[87] vests the court *a quo* with original and exclusive jurisdiction to hear and decide cases involving:

Sec. 5. x x x x x x x x x

(a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, members of associations or organizations registered with the Commission.

Second, we note that petitioners did not object to the institution of the case (on the ground that a derivative suit should have been lodged instead of an individual suit) in any of the proceedings before the court *a quo* or before the CA.[88]

Third, a reading of the complaint (in relation to the cause of action pertaining to ALRAI's corporate properties) shows that

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[85] *Florete v. Florete*, G.R. No. 174909, January 20, 2016.

[86] The Securities Regulation Code (2000). Section 5.2 provides:

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: x x x

[87] Reorganization of the Securities and Exchange Commission with Additional Power and Placing the said Agency under the Administrative Supervision of the Office of the President (1976).

[88] See Answer, *rollo* (G.R. Nos. 188642 & 189425), pp. 170-176; Memorandum for Petitioners, *id.* at 309-326; Memorandum for Loy, *rollo* (G.R. Nos. 188888-89), pp. 473-502; Comment on the Petition, *id.* at 675-683; Comment, *id.* at 690-696.

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respondents do not pray for reliefs for their personal benefit; but in fact, for the benefit of the ALRAI, to wit:

> c) To cease and desist from selling donated lands subject of this case and to annul the titles transferred to Armando Javonillo, Ma. Acelita Armentano, Romeo de la Cruz, Asuncion Alcantara and Lily Loy x x x.
>
> d) To annul the Land Titles fraudulently and directly transferred from the (*sic*) Dacudao in the names of Defendants Javonillo, Armentano, Romeo de la Cruz and Alcantara, and subsequently to Defendant Lily Loy in the name of Agdao Landless Assiociation.[89]

The reliefs sought show that the complaint was filed ultimately to curb the alleged mismanagement of ALRAI's corporate properties. We note that the danger sought to be avoided in *Evangelista v. Santos*[90] does not exist in this case. In *Santos*, plaintiff stockholders sought damages against the principal officer of the corporation, alleging that the officer's mismanagement of the affairs and assets of the corporation brought about the loss of the value of its stocks. In ruling against the plaintiff-stockholders, this Court held that "[t]he stockholders may not directly claim those damages *for themselves* for that would result in the appropriation by, and the distribution among them of part of the corporate assets before the dissolution of the corporation x x x."[91] More, in *Santos*, if only the case was brought before the proper venue, this Court added, "we note that the action stated in their complaint is susceptible of being converted into a derivative suit for the benefit of the corporation by a mere change in the prayer."[92]

In this case, the reliefs sought do not entail the premature distribution of corporate assets. On the contrary, the reliefs seek to preserve them for the corporate interest of ALRAI. Clearly

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[89] *Rollo* (G.R. Nos. 188642 & 189425), p. 165.

[90] 86 Phil. 387 (1950).

[91] *Id.* at 393-394. Emphasis supplied.

[92] *Id.* at 395.

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then, any benefit that may be recovered is accounted for, not in favor of respondents, but for the corporation, who is the real party-in-interest. Therefore, the occasion for the strict application of the rule that a derivative suit should be brought in order to protect and vindicate the interest of the corporation does not obtain under the circumstances of this case.

Commart (Phils.), Inc. v. Securities and Exchange Commission (SEC)[93] upholds the same principle. In that case, the chairman and board of directors of Commart were sued for diverting into their private accounts amounts due to Commart as commissions. Respondents argued that the Hearing Panel of the SEC should dismiss the case on the ground that it has no jurisdiction over the matter because the case is not a derivative suit. The Hearing Panel denied the motion, and was affirmed by the SEC. Upon appeal, this Court affirmed the decision of the SEC, to wit:

> The complaint in SEC Case No. 2673, particularly paragraphs 2 to 9 under First Cause of Action, readily shows that it avers the *diversion of corporate income* into the private bank accounts of petitioner x x x and his wife. Likewise, the principal relief prayed for in the complaint is the recovery of a sum of money *in favor of the corporation*. This being the case, the complaint is definitely a derivative suit. x x x
>
> x x x x x x x x x
>
> In any case, the suit is for the benefit of Commart itself, for a judgment in favor of the complainants will necessarily mean recovery by the corporation of the US$2.5 million alleged to have been diverted from its coffers to the private bank accounts of its top managers and directors. Thus, the prayer in the Amended Complaint is for judgment ordering respondents x x x, "to account for and to turn over or deliver to the Corporation" the aforesaid sum, with legal interest, and "ordering all the respondents, as members of the Board of Directors to take such remedial steps as would protect the corporation from further depredation of the funds and property."[94]

Fourth, based on the records, we find that there is substantial compliance with the requirements of a derivative suit, to wit:

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[93] G.R. No. 85318, June 3, 1991, 198 SCRA 73.

[94] *Id.* at 80-81.

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a) [T]he 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) [H]e 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) [T]he 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.[95]

Here, the court *a quo* found that respondents are *bona fide* members of ALRAI.[96] As for the second requisite, respondents also have tried to demand appropriate relief within the corporation, but the demand was unheeded. In their Memorandum before the CA, respondents alleged, thus:

4.18 The occurrence of the series of distressing revelation prompted Respondents to confront Defendant Armentano on the accounting of all payments made including the justification for the illegal distribution of the Donated Land to four persons mentioned in preceding paragraph (4.12) of this memorandum. Unfortunately, Petitioner Armentano merely reasoned their (referring to the four persons) right to claim ownership of the land as compensation for their service and attorney's fees;

4.19 Anxious of the plan of action taken by the Respondents against the Petitioners, the latter started harassing the unschooled Respondents by unduly threatening them. Respondents simply wanted the land due them, an accounting of the finances of the Association and justification of the illegal disposition of the Donated Land which was donated for the landless members of the Association;

4.20 As a consequence, Petitioners on their own, with grave abuse of power and in violation of the Constitution and By-Laws of the Association maliciously expelled the Respondents particularly those

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[95] *Filipinas Port Services, Inc. v. Go*, G.R. No. 161886, March 16, 2007, 518 SCRA 453, 471-472. Citation omitted.

[96] *Rollo* (G.R. Nos. 188642 & 189425), p. 235.

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persistently inquisitive about Petitioners' moves and acts which only emphasized their practice of upholding the MOB RULE by presenting solicited signatures of alleged members and non-members written on a scrap of paper signifying confirmation of the ouster (*sic*) members. x x x[97]

We note that respondents' demand on Armentano substantially complies with the second requirement. While it is true that the complaining stockholder must show that he has exhausted all the means within his reach to attain within the corporation the redress for his grievances, demand is unnecessary if the exercise will result in futility.[98] Here, after respondents demanded Armentano to justify the transfer of ALRAI's properties to the individual petitioners, respondents were expelled from the corporation, which termination we have already ruled as invalid. To our mind, the threat of expulsion against respondents is sufficient to forestall any expectation of further demand for relief from petitioners. Ultimately, to make an effort to demand redress within the corporation will only result in futility, rendering the exhaustion of other remedies unnecessary.

Finally, the third requirement for the institution of a derivative suit is clearly complied with. As discussed in the previous paragraphs, the cause of action and the reliefs sought ultimately redound to the benefit of ALRAI. In this case, and as in a proper derivative suit, ALRAI is the party-in-interest and respondents are merely nominal parties.

In view of the foregoing, and considering further the interest of justice, and the length of time that this case has been pending, we liberally treat this case as one pursued by the corporation to protect its corporate rights. As the court *a quo* noted, this case "commenced [on] April 2, 2002, blossomed in a full-blown trial and ballooned into seven (7) voluminous rollos."[99]

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[97] *Rollo* (G.R. Nos. 188888-89), p. 448. Underscoring supplied.

[98] See *Hi-Yield Realty, Incorporated v. Court of Appeals*, G.R. No. 168863, June 23, 2009, 590 SCRA 548, 557; *Republic Bank v. Cuaderno*, G.R. No. L-22399, March 30, 1967, 19 SCRA 671; and *Everett v. Asia Banking Corporation*, 49 Phil. 512 (1926).

[99] *Rollo* (G.R. Nos. 188642 &189425), p. 231.

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We now proceed to resolve the issue of the validity of the transfers of the donated lots to Javonillo, Armentano, Dela Cruz, Alcantara and Loy. We agree with the CA in ruling that the TCTs issued in the names of Javonillo, Armentano and Alcantara are void.[100] We modify the ruling of the CA insofar as we rule that the TCTs issued in the names of Dela Cruz and Loy are also void.[101]

One of the primary purposes of ALRAI is the giving of assistance in uplifting and promoting better living conditions to all members in particular and the public in general.[102] One of its objectives includes "to uplift and promote better living condition, education, health and general welfare of all members in particular and the public in general by providing its members humble shelter and decent housing."[103] Respondents maintain that it is pursuant to this purpose and objective that the properties subject of this case were donated to ALRAI.[104]

Section 36, paragraphs 7 and 11 of the Corporation Code provide:

> Sec. 36. *Corporate powers and capacity*. – Every corporation incorporated under this Code has the power and capacity:
>
> x x x x x x x x x
>
> 7. To purchase, receive, take or grant, hold, convey, sell, lease, pledge, mortgage and otherwise deal with such real and personal property, including securities and bonds of other corporations, as the transaction of the lawful business of the corporation may reasonably and necessarily require, subject to the limitations prescribed by law and the Constitution.
>
> x x x x x x x x x

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[100] *Id.* at 75.

[101] *Id.*

[102] Respondents' Comment, *rollo* (G.R. Nos. 188642 & 189425), p. 446.

[103] *Rollo* (G.R. Nos. 188888-89), pp. 561-562.

[104] *Id.* at 438, 561-562; *Rollo* (G.R. Nos. 188642 & 189425), p. 446.

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> 11. To exercise such other powers as may be essential or necessary to carry out its purpose or purposes as stated in the articles of incorporation.[105]

The Corporation Code therefore tells us that the power of a corporation to validly grant or convey any of its real or personal properties is circumscribed by its primary purpose. It is therefore important to determine whether the grant or conveyance is pursuant to a legitimate corporate purpose, or is at least reasonable and necessary to further its purpose.

Based on the records of this case, we find that the transfers of the corporate properties to Javonillo, Armentano, Dela Cruz, Alcantara and Loy are bereft of any legitimate corporate purpose, nor were they shown to be reasonably necessary to further ALRAI's purposes. This is principally because, as respondents argue, petitioners "personally benefitted themselves by allocating among themselves vast track of lands at the dire expense of the landless general membership of the Association."[106]

We take first the cases of Dela Cruz, Alcantara and Loy.

We disagree with the CA in ruling that the TCTs issued in the name of Dela Cruz are valid. The transfer of property to him does not further the corporate purpose of ALRAI. To justify the transfer to Dela Cruz, petitioners merely allege that, "[o]n the other hand, the lots given by ALRAI to Romeo de la Cruz were compensation for the financial assistance he had been extending to ALRAI."[107] Records of this case do not bear any evidence to show how much Dela Cruz has extended to ALRAI as financial assistance. The want of evidence to support this allegation cannot allow a determination whether the amount of the financial help that Dela Cruz extended to ALRAI is commensurate to the amount of the property transferred to him. The lack of evidence on this point is prejudicial to ALRAI because ALRAI had parted with its property without any means by which

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[105] Underscoring supplied.

[106] *Rollo* (G.R. Nos. 188642 & 189425), p. 445.

[107] *Id.* at 20.

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to determine whether the transfer is fair and reasonable under the circumstances.

The same is true with the transfer of properties to Alcantara. Petitioners allege that Alcantara's husband, Atty. Pedro Alcantara, "handled all the legal work both before the Regional Trial Court in Davao City (Civil Case No. 16192) and the Court of Appeals in Manila (CA GR No. 13744). He agreed to render his services although he was being paid intermittently, with just small amounts, in the hope that he will be compensated when ALRAI triumphs in the litigation."[108] Petitioners thus claim that "[b]ecause of the legal services of her husband, who is now deceased, petitioner Alcantara was given by ALRAI two (2) lots x x x."[109]

Petitioners admit that Atty. Pedro Alcantara represented ALRAI as counsel on part contingency basis.[110] In their Memorandum before the court *a quo*, respondents alleged that, "[i]n fact, Complainants have duly paid Atty. Alcantara's legal fees as evidence (*sic*) by corresponding receipts issued by the receiving Officer of the Association."[111] The aforementioned receipts[112] show that Atty. Pedro Alcantara had already been paid the total amount of ₱16,845.00.

In *Rayos v. Hernandez*,[113] we held that a contingent fee arrangement is valid in this jurisdiction. It is generally recognized as valid and binding, but must be laid down in an express contract. In the same case, we have identified the circumstances to be considered in determining the reasonableness of a claim for

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[108] *Id.* at 19. From 1976 to 1996, ALRAI was embroiled in a litigation with Dakudao and Sons, Inc. over the lands in Agdao. The case started in the RTC as Civil Case No. 16192 and reached the Court of Appeals as CA G.R. No. 13744.

[109] *Id.* at 20.

[110] *Id.* at 19.

[111] *Id.* at 385. Referring to Exhibits "DD" to "DD-54."

[112] See Formal Offer of Exhibits, *rollo* (G.R. Nos 188888-89), pp. 191-193; RTC records, Vol. V-A, pp. 159-188.

[113] G.R. No. 169079, February 12, 2007, 515 SCRA 517.

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attorney's fees as follows: (1) the amount and character of the service rendered; (2) labor, time, and trouble involved; (3) the nature and importance of the litigation or business in which the services were rendered; (4) the responsibility imposed; (5) the amount of money or the value of the property affected by the controversy or involved in the employment; (6) the skill and experience called for in the performance of the services; (7) the professional character and social standing of the attorney; (8) the results secured; (9) whether the fee is absolute or contingent, it being recognized that an attorney may properly charge a much larger fee when it is contingent than when it is not; and (10) the financial capacity and economic status of the client have to be taken into account in fixing the reasonableness of the fee.[114]

In this case however, petitioners did not substantiate the extent of the services that Atty. Pedro Alcantara rendered for ALRAI. In fact, no engagement or retainer contract was ever presented to prove the terms of their agreement. Petitioners did not also present evidence as to the value of the ALRAI properties at the time of transfer to Alcantara. There is therefore no proof that the amount of the properties transferred to Alcantara, in addition to the legal fees he received, is commensurate (as compensation) to the reasonable value of his legal services. Using the guidelines set forth in *Rayos*, absent proof, there is no basis to determine whether the transfer of the property to Alcantara is reasonable under the circumstances.[115]

The importance of this doctrine in *Rayos* is emphasized in the Canons of Professional Ethics[116] and the Rules of

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[114] *Id.* at 531. Citations omitted.

[115] We agree with the CA that the transfer to Alcantara (TCT No. T-322971) violated the restriction in the Deed of Donation. As correctly held by the CA, the Secretary's Certificate which "attempt[ed] to remove TCT No. T-322971 (formerly TCT No. T-41367) from the mantle of the '5-year restriction'" cannot be used for that purpose for being belatedly raised for the first time on appeal. *Rollo* (G.R. Nos. 188642 & 189425), p. 71.

[116] 13. Contingent fees.

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Court.[117] In both, the overriding consideration is the reasonableness of the terms of the contingent fee agreement, so much so that the grant of the contingent fee is subject to the supervision of the court.[118]

Spouses Cadavedo v. Lacaya[119] further illustrates this principle. In that case, this Court was confronted with the issue of whether the contingent attorney's fees consisting of one-half of the property that was subject of litigation was valid and reasonable. This Court ruled that the attorney's fee is excessive and unconscionable, and is therefore void. The Court said that as "matters then stood, [there] was not a sufficient reason to justify a large fee in the absence of any showing that special skills and additional work had been involved."[120] The Court also noted that Spouses Cadavedo and Atty. Lacaya already made arrangements for the cost and expenses for the cases handled.[121]

Similarly in this case, there is no proof that special skills and additional work have been put in by Atty. Pedro Alcantara.

A contract for a contingent fee, where sanctioned by law, should be reasonable under all the circumstances of the case including the risk and uncertainty of the compensation, but should always be subject to the supervision of a court, as to its reasonableness.

[117] Rule 138, Sec. 24. *Compensation of attorneys; agreement as to fees*. – An attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services, with a view to the importance of the subject matter of the controversy, the extent of the services rendered, and the professional standing of the attorney. No court shall be bound by the opinion of attorneys as expert witnesses as to the proper compensation, but may disregard such testimony and base its conclusion on its own professional knowledge. A written contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable.

[118] See *Licudan v. Court of Appeals*, G.R. No. 91958, January 24, 1991, 193 SCRA 293, 300.

[119] G.R. No. 173188, January 15, 2014, 713 SCRA 397.

[120] *Id.* at 418.

[121] *Id.* at 419.

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Further, as adverted to in previous paragraphs, receipts show that intermittent payments as legal fees have already been paid to him. We also note that in this case, not only one-half of a property was transferred to Alcantara as compensation; but two whole parcels of land – one with more or less 400 square meters (TCT No. 41366), and the other with more or less 395 square meters (TCT No. 41367).[122] The amount of fee contracted for, *standing alone and unexplained* would be sufficient to show that an unfair advantage had been taken of the client, or that a legal fraud had been perpetrated on him.[123]

Consequently, we also find that Alcantara's subsequent sale to Loy is not valid. Alcantara cannot sell the property, over which she did not have the right to own, in the first place. More, based on the records, the court *a quo* had already made a finding that Loy is guilty of bad faith as to render her purchase of the property from Alcantara void.[124]

We likewise find that there is failure to show any legitimate corporate purpose in the transfer of ALRAI's corporate properties to Javonillo and Armentano.

The Board Resolution[125] confirming the transfer of ALRAI's corporate properties to Javonillo and Armentano merely read, "[t]hat the herein irrevocable confirmation is made in recognition of, and gratitude for the outstanding services rendered by x x x

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[122] Partial Division and Distribution of Donated Land, RTC records, Vol. V-A, pp. 131-132.

[123] *Rayos v. Hernandez*, *supra* note 113 at 530. Citations omitted, emphasis supplied.

[124] "As for Lily Loy, she is not an innocent purchaser in good faith as she personally claimed. From the start she knew, and in fact, her husband Eduardo Loy, verified the cloud of doubt or the land dispute that existed before they bought the property. x x x Furthermore, the fair market value of said land was two million four hundred thousand pesos (₱2,400,000.00) but Lily Loy bought the same for a consideration of two hundred fifty thousand pesos (₱250,000.00) only. This discrepancy is highly suspicious if one claims to be a buyer in good faith." *Rollo* (G.R. Nos. 188642 & 189425), pp. 236-237.

[125] Dated January 5, 2000, *rollo* (G.R. Nos. 188888-89), pp. 110-111.

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Mr. Armando Javonillo, our tireless President and Mrs. Acelita Armentano, our tactful, courageous, and equally tireless Secretary, without whose efforts and sacrifices to acquire a portion of the realty of Dacudao & Sons, Inc., would not have been attained."[126] In their Memorandum, petitioners also alleged that "[t]he most difficult part of their (Javonillo and Armentano) job was to raise money to meet expenses. x x x It was very difficult for petitioners Javonillo and Armentano when they needed to pay ₱300,000.00 for realty tax on the land donated by Dakudao and Sons, Inc. to ALRAI. It became more difficult when the Bureau of Internal Revenue was demanding ₱6,874,000.00 as donor's tax on the donated lands. Luckily, they were able to make representation with the BIR to waive the tax."[127]

These reasons cannot suffice to prove any legitimate corporate purpose in the transfer of the properties to Javonillo and Armentano. For one, petitioners cannot argue that the properties transferred to them will serve as reimbursements of the amounts they advanced for ALRAI. There is no evidence to show that they indeed paid the realty tax on the donated lands. Neither did petitioners present any proof of actual disbursements they incurred whenever Javonillo and Armentano allegedly helped Atty. Pedro Alcantara in handling the cases involving ALRAI.[128] Like in the cases of Dela Cruz and Alcantara, absent proof, there was no basis by which it could have been determined whether the transfer of properties to Javonillo and Armentano was reasonable under the circumstances at that time. Second, petitioners cannot argue that the properties are transferred as compensation for Javonillo. It is well settled that directors of corporations presumptively serve without compensation; so that while the directors, in assigning themselves additional duties, act within their power, they nonetheless act in excess of their

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[126] *Id.* at 110.

[127] *Rollo* (G.R. Nos. 188642 & 189425), p. 314.

[128] *Id.* at 313-315.

authority by voting for themselves compensation for such additional duties.[129] Even then, aside from the claim of petitioners, there is no showing that Javonillo rendered extraordinary or unusual services to ALRAI.

The lack of legitimate corporate purpose is even more emphasized when Javonillo and Armentano, as a director and an officer of ALRAI, respectively, violated the fiduciary nature[130] of their positions in the corporation.

Section 32 of the Corporation Code provides, thus:

> Sec. 32. *Dealings of directors, trustees or officers with the corporation.* – A contract of the corporation with one or more of its directors or trustees or officers is voidable, at the option of such corporation, unless all of the following conditions are present:
>
> 1. That the presence of such director or trustee in the board meeting in which the contract was approved was not necessary to constitute a quorum for such meeting;
>
> 2. That the vote of such director or trustee was not necessary for the approval of the contract;
>
> 3. That the contract is fair and reasonable under the circumstances; and
>
> 4. That in case of an officer, the contract has been previously authorized by the board of directors.
>
> Where any of the first two conditions set forth in the preceding paragraph is absent, in the case of a contract with a director or trustee, such contract may be ratified by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock

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[129] *Central Cooperative Exchange, Inc. v. Enciso,* G.R. No. L-35603, June 28, 1998, 162 SCRA 706, 712.

[130] See De Leon and De Leon, Jr., *The Corporation Code of the Philippines (Annotated)*, 11th ed., 2013, p. 292, citing *Jackson v. Ludeling*, 21 Wall. [U.S.] 616. "In the performance of their official duties, they [directors of the corporation] are under obligations of trust and confidence to the corporation and its stockholders and must act in good faith and for the interest of the corporation or its stockholders with due care and diligence and within the scope of their authority." (Italics omitted.)

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or of at least two-thirds (2/3) of the members in a meeting called for the purpose: Provided, That full disclosure of the adverse interest of the directors or trustees involved is made at such meeting: Provided, however, That the contract is fair and reasonable under the circumstances.

Being the corporation's agents and therefore, entrusted with the management of its affairs, the directors or trustees and other officers of a corporation occupy a fiduciary relation towards it, and cannot be allowed to contract with the corporation, directly or indirectly, or to sell property to it, or purchase property from it, where they act both for the corporation and for themselves.[131] One situation where a director may gain undue advantage over his corporation is when he enters into a contract with the latter.[132]

Here, we note that Javonillo, as a director, signed the Board Resolutions[133] confirming the transfer of the corporate properties to himself, and to Armentano. Petitioners cannot argue that the transfer of the corporate properties to them is valid by virtue of the Resolution[134] by the general membership of ALRAI confirming the transfer for three reasons.

First, as cited, Section 32 requires that the contract should be ratified by a vote representing at least two-thirds of the members in a meeting called for the purpose. Records of this case do not show whether the Resolution was indeed voted by the required percentage of membership. In fact, respondents take exception to the credibility of the signatures of the persons who voted in the Resolution. They argue that, "from the alleged 134 signatures, 24 of which are non-members, 4 of which were signed twice under different numbers, and 27 of which are apparently proxies unequipped with the proper authorization.

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[131] De Leon and De Leon, Jr., *The Corporation Code of the Philippines (Annotated)*, 11th ed., 2013, p. 297, citing 3 Fletcher, p. 387.

[132] Campos, *The Corporation Code, Comments, Notes and Selected Cases,* Vol. 1, 1990, p. 687.

[133] *Rollo* (G.R. Nos. 188888-89), pp. 110-121.

[134] Dated January 9, 2000, *id.* at 112-121.

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Obviously, on such alleged general membership meeting the majority of the entire membership was not attained."[135]

Second, there is also no showing that there was full disclosure of the adverse interest of the directors involved when the Resolution was approved. Full disclosure is required under the aforecited Section 32 of the Corporation Code.[136]

Third, Section 32 requires that the contract be fair and reasonable under the circumstances. As previously discussed, we find that the transfer of the corporate properties to the individual petitioners is not fair and reasonable for (1) want of legitimate corporate purpose, and for (2) the breach of the fiduciary nature of the positions held by Javonillo and Armentano. Lacking any of these (full disclosure and a showing that the contract is fair and reasonable), ratification by the two-thirds vote would be of no avail.[137]

In view of the foregoing, we rule that the transfers of ALRAI's corporate properties to Javonillo, Armentano, Dela Cruz, Alcantara and Loy are void. We affirm the finding of the court *a quo* when it ruled that "[n]o proof was shown to justify the transfer of the titles, hence, said transfer should be annulled."[138]

WHEREFORE, in view of the foregoing, the petitions for review on *certiorari* in G.R. Nos. 188642 & 189425 and in G.R. Nos. 188888-89 are **PARTIALLY GRANTED.** The Decision of the CA dated November 24, 2008 and its Resolution dated June 19, 2009 ruling that respondents are reinstated as members of ALRAI are hereby **AFFIRMED**. The Decision of the CA dated November 24, 2008 and its Resolution dated June 19, 2009 are **MODIFIED** as follows:

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[135] *Id.* at 467.

[136] Records do not show that the Minutes of the Meeting of the General Membership was presented as evidence.

[137] Campos, *The Corporation Code, Comments, Notes and Selected Cases,* Vol. 1, 1990, pp. 688-689.

[138] *Rollo* (G.R. Nos. 188642 & 189425), p. 236.

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The following Transfer Certificates of Title are **VOID**:

(1) TCT Nos. T-322962 and T-322963 in the name of Armando Javonillo;

(2) TCT Nos. T-322964 and T-322965 in the name of Ma. Acelita Armentano;

(3) TCT Nos. T-322966, T-322967, T-322968, and T-322969 in the name of Romeo Dela Cruz;

(4) TCT No. T-338403 in the name of Lily Loy; and

(5) TCT No. T-322971 in the name of Asuncion Alcantara.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Perez,* and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 192679. October 17, 2016]

ANTONIO ESCOTO, *petitioner, vs.* **PHILIPPINE AMUSEMENT AND GAMING CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI*; THE COURT OF APPEALS' (CA) DETERMINATION THAT THE ISSUES WERE PURELY LEGAL QUESTIONS DESERVED RESPECT IN THE ABSENCE OF A CLEAR SHOWING OF GRAVE ABUSE OF DISCRETION; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.— [T]he determination of whether or not the appeal was upon a question of law was within the discretion of the CA as the appellate court. In making its determination thereon, the CA correctly relied on the assignment of errors expressly made in the