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SECOND DIVISION

[G.R. No. 172843. September 24, 2014]

ALFREDO L. VILLAMOR, JR., *petitioner, vs.* **JOHN S. UMALE, in substitution of HERNANDO F. BALMORES,** *respondent.*

[G.R. No. 172881. September 24, 2014]

RODIVAL E. REYES, HANS M. PALMA, and DOROTEO M. PANGILINAN, *petitioners, vs.* **HERNANDO F. BALMORES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTION OF LAW MAY BE RAISED.— Under Rule 45, only questions of law may be raised. There is a question of law "when there is doubt or controversy as to what the law is on a certain [set] of facts." The test is "whether the appellate court can determine the issue raised without reviewing or evaluating the evidence." Meanwhile, there is a question of fact when there is "doubt . . . as to the truth or falsehood of facts." The question must involve the examination of probative value of the evidence presented.

2. COMMERCIAL LAW; CORPORATION LAW; DERIVATIVE SUIT FILED BY STOCKHOLDERS TO ENFORCE A CORPORATE ACTION; ELUCIDATED.— A derivative suit is an action filed by stockholders to enforce a corporate action. It is an exception to the general rule that the corporation's power to sue is exercised only by the board of directors or trustees. Individual stockholders may be allowed to sue on behalf of the corporation whenever the directors or officers of the corporation refuse to sue to vindicate the rights of the corporation or are the ones to be sued and are in control of the corporation. It is allowed when the "directors [or officers] are guilty of breach of . . . trust, [and] not of mere error of judgment." In derivative suits, the real party in interest is the

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corporation, and the suing stockholder is a mere nominal party. Thus, this court noted: The Court has recognized that a stockholder's right to institute a derivative suit is not based on any express provision of the Corporation Code, or even the Securities Regulation Code, but is impliedly recognized when the said laws make corporate directors or officers liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties. In effect, the suit is an action for specific performance of an obligation, owed by the corporation to the stockholders, to assist its rights of action when the corporation has been put in default by the wrongful refusal of the directors or management to adopt suitable measures for its protection.

3. ID.; ID.; INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES; DERIVATIVE SUITS; REQUISITES.— Rule 8, Section 1 of the Interim Rules of Procedure for Intra-Corporate Controversies (Interim Rules) provides the five (5) requisites for filing 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 at 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 act or acts complained of; and (4) The suit is not a nuisance or harassment suit. In case of nuisance or harassment suit, the court shall forthwith dismiss the case. The fifth requisite for filing derivative suits, while not included in the enumeration, is implied in the first paragraph of Rule 8, Section 1 of the Interim Rules: The action brought by the stockholder or member must be "in the name of [the] corporation or association. . . ." This requirement has already been settled in jurisprudence. Thus, in *Western Institute of Technology, Inc., et al. v. Salas, et al.*, this court said that "[a]mong the basic requirements for a derivative suit to prosper is that the minority shareholder who is suing for and on behalf of the corporation must allege in his complaint before the proper forum that he is suing on

a derivative cause of action on behalf of the corporation and all other shareholders similarly situated who wish to join [him]." x x x Moreover, it is important that the corporation be made a party to the case.

4. ID.; ID.; ID.; ID.; ID.; REQUISITE THAT NO APPRAISAL RIGHTS ARE AVAILABLE FOR THE ACT/S COMPLAINED OF; INSTANCES OF APPRAISAL RIGHT.— Section 81 of the Corporation Code provides the instances of appraisal right: SEC. 81. *Instances of appraisal right.*— Any stockholder of a corporation shall have the right to dissent and demand payment of the fair value of his shares in the following instances: 1. In case any amendment to the articles of incorporation has the effect of changing or restricting the rights of any stockholders or class of shares, or of authorizing preferences in any respect superior to those of outstanding shares of any class, or of extending or shortening the term of corporate existence; 2. In case of sale, lease, exchange, transfer, mortgage, pledge or other disposition of all or substantially all of the corporate property and assets as provided in this Code; and 3. In case of merger or consolidation. Section 82 of the Corporation Code provides that the stockholder may exercise the right if he or she voted against the proposed corporate action and if he made a written demand for payment on the corporation within thirty (30) days after the date of voting.

5. ID.; ID.; ID.; RULE REFERRING TO ACTS OF THE BOARD, ASSOCIATES AND OFFICERS AMOUNTING TO FRAUD OR MISREPRESENTATION; DISCUSSED.— Rule 1, Section 1(a)(1) of the Interim Rules refers to acts of the board, associates, and officers, amounting to fraud or misrepresentation, which may be detrimental to the interest of the stockholders. This is different from a derivative suit. While devices and schemes of the board of directors, business associates, or officers amounting to fraud under Rule 1, Section 1(a)(1) of the Interim Rules are causes of a derivative suit, it is not always the case that derivative suits are limited to such causes or that they are necessarily derivative suits. Hence, they are separately enumerated in Rule 1, Section 1(a) of the Interim Rules. Stockholder/s' suits based on fraudulent or wrongful acts of directors, associates, or officers may also be individual suits or class suits. Individual suits are filed when

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the cause of action belongs to the individual 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.

6. ID.; ID.; A WRONG TO THE CORPORATION DOES NOT NECESSARILY CREATE AN INDIVIDUAL CAUSE OF ACTION.— Corporations have a personality that is separate and distinct from their stockholders and directors. A wrong to the corporation does not necessarily create an individual cause of action. "A cause of action is the act or omission by which a party violates the right of another." A cause of action must pertain to complainant if he or she is to be entitled to the reliefs sought. Thus, in *Cua v. Tan*, this court emphasized: . . . 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.

7. ID.; ID.; APPOINTMENT OF MANAGEMENT COMMITTEE; DISCUSSED.— A corporation may be placed under receivership, or management committees may be created to preserve properties involved in a suit and to protect the rights of the parties under the control and supervision of the court. Management committees and receivers are appointed when the corporation is in imminent danger of "(1) [d]issipation, loss, wastage or destruction of assets or other properties; and (2) [p]aralysation of its business operations that may be prejudicial to the interest of the minority stockholders, parties-litigants, or the general public." Applicants for the appointment of a receiver or management committee need to establish the

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confluence of these two requisites. This is because appointed receivers and management committees will immediately take over the management of the corporation and will have the management powers specified in law. This may have a negative effect on the operations and affairs of the corporation with third parties, as persons who are more familiar with its operations are necessarily dislodged from their positions in favor of appointees who are strangers to the corporation's operations and affairs.

8. ID.; ID.; ID.; NOT WITHIN THE JURISDICTION OF THE COURT OF APPEALS TO APPOINT.— The Court of Appeals has no power to appoint a receiver or management committee. The Regional Trial Court has original and exclusive jurisdiction to hear and decide intra-corporate controversies, including incidents of such controversies. These incidents include applications for the appointment of receivers or management committees. "The receiver and members of the management committee . . . are considered officers of the court and shall be under its control and supervision." They are required to report to the court on the status of the corporation within sixty (60) days from their appointment and every three (3) months after.

APPEARANCES OF COUNSEL

Perlas de Guzman Antonio & Herbosa Law Firm for petitioners in G.R. No. 172881.

Defensor Villamor & Tolentino Law Offices for petitioner in G.R. No. 172843.

Ponce Enrile Reyes & Manalastas for respondent.

D E C I S I O N

LEONEN, *J.*:

Before us is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, assailing the decision[2] of the Court of

[1] *Rollo* (G.R. No. 172843), pp. 2-32.

[2] *Id.* at 36-56.

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Appeals dated March 2, 2006 and its resolution[3] dated May 29, 2006, denying petitioners' motions for reconsideration. The Court of Appeals placed Pasig Printing Corporation (PPC) under receivership and appointed an interim management committee for the corporation.[4]

MC Home Depot occupied a prime property (Rockland area) in Pasig. The property was part of the area owned by Mid-Pasig Development Corporation (Mid-Pasig).[5]

On March 1, 2004, PPC obtained an option to lease portions of Mid-Pasig's property, including the Rockland area.[6]

On November 11, 2004, PPC's board of directors issued a resolution[7] waiving all its rights, interests, and participation in the option to lease contract in favor of the law firm of Atty. Alfredo Villamor, Jr. (Villamor), petitioner in G.R. No. 172843. PPC received no consideration for this waiver in favor of Villamor's law firm.[8]

On November 22, 2004, PPC, represented by Villamor, entered into a memorandum of agreement (MOA) with MC Home Depot.[9] Under the MOA, MC Home Depot would continue to occupy the area as PPC's sub-lessee for four (4) years, renewable for another four (4) years, at a monthly rental of ₱4,500,000.00 plus goodwill of ₱18,000,000.00.[10]

In compliance with the terms of the MOA, MC Home Depot issued 20 post-dated checks representing rental payments for one year and the goodwill money. The checks were given to

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[3] *Id.* at 58-59.

[4] *Id.* at 55-56.

[5] *Id.* at 39-40.

[6] *Rollo* (G.R. No. 172843), p. 63 and *rollo* (G.R. No. 172881), p. 53.

[7] *Rollo* (G.R. No. 172843), pp. 138-139.

[8] *Id.* at 68 and *rollo* (G.R. No. 172881), pp. 53-54.

[9] *Rollo* (G.R. No. 172881), p. 54.

[10] *Id.* and *rollo* (G.R. No. 172843), p. 64.

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Villamor who did not turn these or the equivalent amount over to PPC, upon encashment.[11]

Hernando Balmores, respondent in G.R. No. 172843 and G.R. No. 172881 and a stockholder and director of PPC,[12] wrote a letter addressed to PPC's directors, petitioners in G.R. No. 172881, on April 4, 2005.[13] He informed them that Villamor should be made to deliver to PPC and account for MC Home Depot's checks or their equivalent value.[14]

Due to the alleged inaction of the directors, respondent Balmores filed with the Regional Trial Court an intra-corporate controversy complaint under Rule 1, Section 1(a)(1) of the Interim Rules for Intra-Corporate Controversies[15] (Interim Rules) against petitioners for their alleged devices or schemes amounting to fraud or misrepresentation "detrimental to the interest of the corporation and its stockholders."[16]

Respondent Balmores alleged in his complaint that because of petitioners' actions, PPC's assets were ". . . not only in imminent danger, but have actually been dissipated, lost, wasted and destroyed."[17]

Respondent Balmores prayed that a receiver be appointed from his list of nominees.[18] He also prayed for petitioners'

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[11] *Rollo* (G.R. No. 172881), p. 54.

[12] *Rollo* (G.R. No. 172843), p. 78.

[13] *Rollo* (G.R. No. 172881), p. 55.

[14] *Id.* and *rollo* (G.R. No. 172843), p. 67.

[15] Interim Rules of Procedure for Intra-Corporate Controversies (A.M. No. 01-2-04-SC, hereinafter "Interim Rules")

Rule 1, Sec. 1(a) Cases Covered – These rules shall govern the procedure to be observed in civil cases involving the following:

(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.

[16] *Rollo* (G.R. No. 172881), p. 55.

[17] *Rollo* (G.R. No. 172843), pp. 69-70.

[18] *Id.* at 71.

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prohibition from "selling, encumbering, transferring or disposing in any manner any of [PPC's] properties, including the MC Home [Depot] checks and/or their proceeds."[19] He prayed for the accounting and remittance to PPC of the MC Home Depot checks or their proceeds and for the annulment of the board's resolution waiving PPC's rights in favor of Villamor's law firm.[20]

Ruling of the Regional Trial Court

In its resolution[21] dated June 15, 2005, the Regional Trial Court denied respondent Balmores' prayer for the appointment of a receiver or the creation of a management committee. The dispositive portion reads:

> **WHEREFORE,** premises considered the ***appointment*** of a **Receiver** and the creation of a **Management Committee** ***applied*** for by plaintiff **Hernando F. Balmores** are, as they are hereby, **DENIED.**[22] (Emphasis in the original)

According to the trial court, PPC's entitlement to the checks was doubtful. The resolution issued by PPC's board of directors, waiving its rights to the option to lease contract in favor of Villamor's law firm, must be accorded *prima facie* validity.[23]

The trial court also noted that there was a pending case filed by one Leonardo Umale against Villamor, involving the same checks. Umale was also claiming ownership of the checks.[24] This, according to the trial court, weakened respondent Balmores' claim that the checks were properties of PPC.[25]

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[19] *Id*. at 72.

[20] *Id*. at 72-73.

[21] *Id*. at 315-318.

[22] *Id*. at 318.

[23] *Id*. at 316.

[24] *Id*. at 317.

[25] *Id*.

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The trial court also found that there was "no clear and positive showing of dissipation, loss, wastage, or destruction of [PPC's] assets . . . [that was] prejudicial to the interest of the minority stockholders, parties-litigants or the general public."[26] The board's failure to recover the disputed amounts was not an indication of mismanagement resulting in the dissipation of assets.[27]

The trial court noted that PPC was earning substantial rental income from its other sub-lessees.[28]

The trial court added that the failure to implead PPC was fatal. PPC should have been impleaded as an indispensable party, without which, there would be no final determination of the action.[29]

Ruling of the Court of Appeals

Respondent Balmores filed with the Court of Appeals a petition for *certiorari* under Rule 65 of the Rules of Court.[30] He assailed the decision of the trial court, which denied his "application for the appointment of a [r]eceiver and the creation of a [m]anagement [c]ommittee."[31]

In the decision promulgated on March 2, 2006, the Court of Appeals gave due course to respondent Balmores' petition. It reversed the trial court's decision, and issued a new order placing PPC under receivership and creating an interim management committee.[32] The dispositive portion reads:

WHEREFORE, premises considered, the instant petition is hereby **GRANTED** and **GIVEN DUE COURSE** and the June 15, 2005 Order/

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[26] *Id*.

[27] *Id*. at 317-318.

[28] *Id*. at 318.

[29] *Id*.

[30] *Id*. at 39.

[31] *Id*.

[32] *Id*. at 55-56.

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Resolution of the commercial court, the Regional Trial Court of Pasig City, Branch 167, in S.E.C. Case No. 05-62, is hereby **REVERSED** and **SET ASIDE** and a **NEW ORDER** is **ISSUED** that, during the pendency of the derivative suit, until judgment on the merits is rendered by the commercial court, in order to prevent dissipation, loss, wastage or destruction of the assets, in order to prevent paralization of business operations which may be prejudicial to the interest of stockholders, parties-litigants or the general public, and in order to prevent violations of the corporation laws: (1) Pasig Printing Corporation (PPC) is hereby placed under receivership pursuant to the Rules Governing Intra-Corporate Controversies under R.A. No. 8799; (2) an Interim Management Committee is hereby created for Pasig Printing Corporation (PPC) composed of Andres Narvasa, Jr., Atty. Francis Gustilo and Ms Rosemarie Salvio-Leonida; (3) the interim management committee is hereby directed to forthwith, during the pendency of the derivative suit until judgment on the merits is rendered by the commercial court, to: (a) take over the business of Pasig Printing Corporation (PPC), (b) take custody and control of all assets and properties owned and possessed by Pasig Printing Corporation (PPC), (c) take the place of the management and the board of directors of Pasig Printing Corporation (PPC), (d) preserve Pasig Printing Corporation's assets and properties, (e) stop and prevent any disposal, in any manner, of any of the properties of Pasig Printing Corporation (PPC) including the MC Home Depot checks and/or their proceeds; and (3) [sic] restore the status quo ante prevailing by directing respondents their associates and agents to account and return to the Interim Management Committee for Pasig Printing Corporation (PPC) all the money proceeds of the 20 MC Home Depot checks taken by them and to account and surrender to the Interim Management Committee all subsequent MC Home Depot checks or proceeds.[33] (Citation omitted)

The Court of Appeals characterized the assailed order/resolution of the trial court as an interlocutory order that is not appealable.[34] In reversing the trial court order/resolution, the Court of Appeals considered the danger of dissipation, wastage, and loss of PPC's assets if the review of the trial court's judgment would be delayed.[35]

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[33] *Id*.

[34] *Id*. at 43–44.

[35] *Id*. at 44–45.

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The Court of Appeals ruled that the case filed by respondent Balmores with the trial court "[was] a derivative suit because there were allegations of fraud or ultra vires acts . . . by [PPC's directors]."[36]

According to the Court of Appeals, the trial court abandoned its duty to the stockholders in a derivative suit when it refused to appoint a receiver or create a management committee, all during the pendency of the proceedings. The assailed order of the trial court removed from the stockholders their right, in an intra-corporate controversy, to be allowed the remedy of appointment of a receiver during the pendency of a derivative suit, leaving the corporation under the control of an outsider and its assets prone to dissipation.[37] The Court of Appeals also ruled that this amounts to "despotic, capricious, or whimsical exercise of judicial power"[38] on the part of the trial court.

In justifying its decision to place PPC under receivership and to create a management committee, the Court of Appeals stated that the board's waiver of PPC's rights in favor of Villamor's law firm without any consideration and its inaction on Villamor's failure to turn over the proceeds of rental payments to PPC warrant the creation of a management committee.[39] The circumstances resulted in the imminent danger of loss, waste, or dissipation of PPC's assets.[40]

Petitioners filed separate motions for reconsideration. Both motions were denied by the Court of Appeals on May 29, 2006. The dispositive portion of the Court of Appeals' resolution reads:

WHEREFORE, for lack of merit, respondents' March 10, 2006 and March 20, 2006 Motions for Reconsideration are hereby **DENIED.**[41]

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[36] *Id*. at 51.

[37] *Id*. at 47.

[38] *Id*.

[39] *Id*. at 52-54.

[40] *Id*. at 53-55.

[41] *Id*. at 59.

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Petitioners filed separate petitions for review under Rule 45, raising the following threshold issues:

I. Whether the Court of Appeals correctly characterized respondent Balmores' action as a derivative suit

II. Whether the Court of Appeals properly placed PPC under receivership and created a receiver or management committee

PPC's directors argued that the Court of Appeals erred in characterizing respondent Balmores' suit as a derivative suit because of his failure to implead PPC as party in the case. Hence, the appellate court did not acquire jurisdiction over the corporation, and the appointment of a receiver or management committee is not valid.[42]

The directors further argued that the requirements for the appointment of a receiver or management committee under Rule 9[43] of the Interim Rules were not satisfied. The directors pointed out that respondent Balmores failed to prove that the assets of the corporation were in imminent danger of being dissipated.[44]

According to the directors, assuming that a receiver or management committee may be appointed in the case, it is the Regional Trial Court only and not the Court of Appeals that must appoint them.[45]

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[42] *Rollo* (G.R. No. 172881), pp. 22-28.

[43] Rule 9. Management Committee

Section 1. *Creation of a management committee*. - As an incident to any of the cases filed under these Rules or the Interim Rules Corporate Rehabilitation, a party may apply for the appointment of a management committee for the corporation, partnership or association, when there is imminent danger of:

(1) Dissipation, loss, wastage or destruction of assets or other properties; and

(2) Paralyzation of its business operations which may be prejudicial to the interest of the minority stockholders, parties-litigants or the general public.

[44] *Rollo* (G.R. No. 172881), pp. 37-38.

[45] *Id*. at 19.

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Meanwhile, Villamor argued that PPC's entitlement to the checks or their proceeds was still in dispute. In a separate civil case against Villamor, a certain Leonardo Umale was claiming ownership of the checks.[46]

Villamor also argued that the Court of Appeals' order to place PPC under receivership and to appoint a management committee does not endanger PPC's assets because the MC Home Depot checks were not the only assets of PPC.[47] Therefore, it would not affect the operation of PPC or result in its paralysation.[48]

In his comment, respondent Balmores argued that Villamor's and the directors' petitions raise questions of facts, which cannot be allowed in a petition for review under Rule 45.[49]

On the appointment of a receiver or management committee, respondent Balmores stated that the ". . . very practice of waiving assets and income for no consideration can in fact lead, not only to the paralyzation of business, but to the complete loss or cessation of business of PPC[.] It is precisely because of this fraudulent practice that a receiver/management committee must be appointed to protect the assets of PPC from further fraudulent acts, devices and schemes."[50]

The petitions have merit.

I

Petition for review on *certiorari* under Rule 45 was proper

First, we rule on the issue of whether petitioners properly filed a petition for review on *certiorari* under Rule 45.

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[46] *Rollo* (G.R. No. 172843), p. 15.

[47] *Id.* at 23-24.

[48] *Id.* at 24.

[49] *Rollo* (G.R. No. 172881), p. 526.

[50] *Id.* at 537.

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Respondent Balmores argued that the petition raises questions of fact.

Under Rule 45, only questions of law may be raised.[51] There is a question of law "when there is doubt or controversy as to what the law is on a certain [set] of facts."[52] The test is "whether the appellate court can determine the issue raised without reviewing or evaluating the evidence."[53] Meanwhile, there is a question of fact when there is "doubt . . . as to the truth or falsehood of facts."[54] The question must involve the examination of probative value of the evidence presented.

In this case, petitioners raise issues on the correctness of the Court of Appeals' conclusions.

Specifically, petitioners ask (1) whether respondent Balmores' failure to implead PPC in his action with the trial court was fatal; (2) whether the Court of Appeals correctly characterized respondent Balmores' action as a derivative suit; (3) whether the Court of Appeals' appointment of a management committee was proper; and (4) whether the Court of Appeals may exercise the power to appoint a management committee.

These are questions of law that may be determined without looking into the evidence presented. The question of whether the conclusion drawn by the Court of Appeals from a set of facts is correct is a question of law, cognizable by this court.[55]

Petitioners, therefore, properly filed a petition for review under Rule 45.

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[51] RULES OF COURT, Rule 45, Sec. 1.

[52] *Central Bank of the Philippines v. Castro*, 514 Phil. 425, 434 (2005) [Per *J.* Puno, Second Division].

[53] *Id*.

[54] *Id*.

[55] *Cunanan v. Lazatin and Lazatin*, 74 Phil. 719, 724 (1944) [Per *J.* Ozaeta, *En Banc*].

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II

Respondent Balmores' action in the trial court is not a derivative suit

A derivative suit is an action filed by stockholders to enforce a corporate action.[56] It is an exception to the general rule that the corporation's power to sue[57] is exercised only by the board of directors or trustees.[58]

Individual stockholders may be allowed to sue on behalf of the corporation whenever the directors or officers of the corporation refuse to sue to vindicate the rights of the corporation or are the ones to be sued and are in control of the corporation.[59] It is allowed when the "directors [or officers] are guilty of breach of . . . trust, [and] not of mere error of judgment."[60]

In derivative suits, the real party in interest is the corporation, and the suing stockholder is a mere nominal party.[61] Thus, this court noted:

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[56] *Hi-Yield Realty, Incorporated v. Court of Appeals*, 608 Phil. 350, 358 (2009) [Per *J.* Quisumbing, Second Division], citing *R.N. Symaco Trading Corporation v. Santos*, 504 Phil. 573, 589 (2005) [Per J. Callejo, Sr., Second Division].

[57] CORP. CODE, Sec. 36(1).

[58] CORP. CODE, Sec. 23; cf. Sec. 36(1).

[59] *Hi-Yield Realty, Incorporated v. Court of Appeals*, 608 Phil. 350, 358 (2009) [Per *J.* Quisumbing, Second Division]. See also *Asset Privatization Trust v. Court of Appeals*, 360 Phil. 768, 805 (1998) [Per *J.* Kapunan, Third Division] and *Republic Bank v. Cuaderno*, 125 Phil. 1076, 1082 (1967) [Per *J.* J.B.L. Reyes, *En Banc*].

[60] *Bitong v. Court of Appeals*, 354 Phil. 516, 545 (1998) [Per *J.* Bellosillo, First Division].

[61] *Hi-Yield Realty, Incorporated v. Court of Appeals*, 608 Phil. 350, 358 (2009) [Per J. Quisumbing, Second Division], citing *Filipinas Port Services, Inc. v. Go*, 547 Phil. 360, 377 (2007) [Per *J.* Garcia, First Division]. See also *Asset Privatization Trust v. Court of Appeals*, 360 Phil. 768, 805 (1998) [Per *J.* Kapunan, Third Division], citing *Gamboa v. Victoriano*, 179 Phil. 36, 43 (1979) [Per *J.* Concepcion, Jr., Second Division].

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The Court has recognized that a stockholder's right to institute a derivative suit is not based on any express provision of the Corporation Code, or even the Securities Regulation Code, but is impliedly recognized when the said laws make corporate directors or officers liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties. In effect, the suit is an action for specific performance of an obligation, owed by the corporation to the stockholders, to assist its rights of action when the corporation has been put in default by the wrongful refusal of the directors or management to adopt suitable measures for its protection.[62]

Rule 8, Section 1 of the Interim Rules of Procedure for Intra-Corporate Controversies (Interim Rules) provides the five (5) requisites[63] for filing 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 at 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 act or acts complained of; and
(4) The suit is not a nuisance or harassment suit.

In case of nuisance or harassment suit, the court shall forthwith dismiss the case.

The fifth requisite for filing derivative suits, while not included in the enumeration, is implied in the first paragraph of Rule 8, Section 1 of the Interim Rules: The action brought by the

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[62] *Cua, Jr. v. Tan*, G.R. Nos. 181455–56 and 182008, December 4, 2009, 607 SCRA 645, 696 [Per *J.* Chico-Nazario, Third Division].

[63] See also *Filipinas Port Services, Inc. v. Go*, 547 Phil. 360, 378 (2007) [Per *J.* Garcia, First Division].

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stockholder or member must be "in the name of [the] corporation or association. . . ." This requirement has already been settled in jurisprudence.

Thus, in *Western Institute of Technology, Inc., et al. v. Salas, et al.*,[64] this court said that "[a]mong the basic requirements for a derivative suit to prosper is that the minority shareholder who is suing for and on behalf of the corporation must allege in his complaint before the proper forum that he is suing on a derivative cause of action on behalf of the corporation and all other shareholders similarly situated who wish to join [him]."[65] This principle on derivative suits has been repeated in, among other cases, *Tam Wing Tak v. Hon. Makasiar and De Guia*[66] and in *Chua v. Court of Appeals*,[67] which was cited in *Hi-Yield Realty, Incorporated v. Court of Appeals*.[68]

Moreover, it is important that the corporation be made a party to the case.[69]

This court explained in *Asset Privatization Trust v. Court of Appeals*[70] why it is a condition *sine qua non* that the corporation be impleaded as party in derivative suits. Thus:

> Not only is the corporation an indispensible party, but it is also the present rule that it must be served with process. The reason given is that the judgment must be made binding upon the corporation in order that the corporation may get the benefit of the suit and may not bring a subsequent suit against the same defendants for the same cause of action. In other words the corporation must be joined as

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[64] 343 Phil. 742 (1997) [Per *J.* Hermosisima, Jr., First Division].

[65] *Id*. at 753, citing A. F. AGBAYANI, *COMMENTARIES AND JURISPRUDENCE ON THE COMMERCIAL LAWS OF THE PHILIPPINES*, Vol. III, 543 (1988).

[66] 403 Phil. 391 (2001) [Per *J.* Quisumbing, Second Division].

[67] 485 Phil. 644 (2004) [Per *J.* Quisumbing, First Division].

[68] 608 Phil. 350 (2009) [Per *J.* Quisumbing, Second Division].

[69] *Republic Bank v. Cuaderno*, 125 Phil. 1076, 1084 (1967) [Per *J.* J.B.L. Reyes, *En Banc*].

[70] 360 Phil. 768 (1998) [Per *J.* Kapunan, Third Division].

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party because it is its cause of action that is being litigated and because judgment must be a *res judicata* against it.[71]

In the same case, this court enumerated the reasons for disallowing a direct individual suit.

> The reasons given for not allowing direct individual suit are:
>
> (1) . . . "the universally recognized doctrine that a stockholder in a corporation has no title legal or equitable to the corporate property; that both of these are in the corporation itself for the benefit of the stockholders." In other words, to allow shareholders to sue separately would conflict with the separate corporate entity principle;
> (2) . . . that the prior rights of the creditors may be prejudiced. Thus, our Supreme Court held in the case of *Evangelista v. Santos*, that 'the 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 and the liquidation of its debts and liabilities, something which cannot be legally done in view of Section 16 of the Corporation Law. . .";
> (3) the filing of such suits would conflict with the duty of the management to sue for the protection of all concerned;
> (4) it would produce wasteful multiplicity of suits; and
> (5) it would involve confusion in ascertaining the effect of partial recovery by an individual on the damages recoverable by the corporation for the same act.[72]

While it is true that the basis for allowing stockholders to file derivative suits on behalf of corporations is based on equity,

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[71] *Id.* at 805, citing A. F. AGBAYANI, *COMMERCIAL LAW OF THE PHILIPPINES*, Vol. III, 566, citing BALLANTINE, 366-367.

[72] *Id*. at 805–806, citing A. F. AGBAYANI, *COMMERCIAL LAW OF THE PHILIPPINES*, Vol. III, 565-566.

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the above legal requisites for its filing must necessarily be complied with for its institution.[73]

Respondent Balmores' action in the trial court failed to satisfy all the requisites of a derivative suit.

Respondent Balmores failed to exhaust all available remedies to obtain the reliefs he prayed for. Though he tried to communicate with PPC's directors about the checks in Villamor's possession before he filed an action with the trial court, respondent Balmores was not able to show that this comprised all the remedies available under the articles of incorporation, by-laws, laws, or rules governing PPC.

An allegation that appraisal rights were not available for the acts complained of is another requisite for filing derivative suits under Rule 8, Section 1(3) of the Interim Rules.

Section 81 of the Corporation Code provides the instances of appraisal right:

> SEC. 81. *Instances of appraisal right.*— Any stockholder of a corporation shall have the right to dissent and demand payment of the fair value of his shares in the following instances:
>
> 1. In case any amendment to the articles of incorporation has the effect of changing or restricting the rights of any stockholders or class of shares, or of authorizing preferences in any respect superior to those of outstanding shares of any class, or of extending or shortening the term of corporate existence;
> 2. In case of sale, lease, exchange, transfer, mortgage, pledge or other disposition of all or substantially all of the corporate property and assets as provided in this Code; and
> 3. In case of merger or consolidation.

Section 82 of the Corporation Code provides that the stockholder may exercise the right if he or she voted against the proposed corporate action and if he made a written demand

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[73] *Cua, Jr. v. Tan*, G.R. Nos. 181455-56 and 182008, December 4, 2009, 607 SCRA 645, 696 [Per *J.* Chico-Nazario, Third Division].

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for payment on the corporation within thirty (30) days after the date of voting.

Respondent Balmores complained about the alleged inaction of PPC's directors in his letter informing them that Villamor should be made to deliver to PPC and account for MC Home Depot's checks or their equivalent value. He alleged that these are devices or schemes amounting to fraud or misrepresentation detrimental to the corporation's and the stockholders' interests. He also alleged that the directors' inaction placed PPC's assets in imminent and/or actual dissipation, loss, wastage, and destruction.

Granting that (a) respondent Balmores' attempt to communicate with the other PPC directors already comprised all the available remedies that he could have exhausted and (b) the corporation was under full control of petitioners that exhaustion of remedies became impossible or futile,[74] respondent Balmores failed to allege that appraisal rights were not available for the acts complained of here.

Neither did respondent Balmores implead PPC as party in the case nor did he allege that he was filing on behalf of the corporation.

The non-derivative character of respondent Balmores' action may also be gleaned from his allegations in the trial court complaint. In the complaint, he described the nature of his action as an action under Rule 1, Section 1(a)(1) of the Interim Rules, and not an action under Rule 1, Section 1(a)(4) of the Interim Rules, which refers to derivative suits. Thus, respondent Balmores said:

1.1 **This is an action under Section 1 (a) (1), Rule 1 of the Interim Rules of Procedure for Intra-corporate Controversies,** involving devices or schemes employed by, or acts of, the defendants as board of directors, business associates and officers of Pasig Printing Corporation (PPC), amounting to fraud or misrepresentation, which

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[74] See *Filipinas Port Services, Inc. v. Go*, 547 Phil. 360, 377 and 379 (2007) [Per *J.* Garcia, First Division].

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are detrimental to the interest of the plaintiff as stockholder of PPC.[75] (Emphasis supplied)

Rule 1, Section 1(a)(1) of the Interim Rules refers to acts of the board, associates, and officers, amounting to fraud or misrepresentation, which may be detrimental to the interest of the stockholders. This is different from a derivative suit.

While devices and schemes of the board of directors, business associates, or officers amounting to fraud under Rule 1, Section 1(a)(1) of the Interim Rules are causes of a derivative suit, it is not always the case that derivative suits are limited to such causes or that they are necessarily derivative suits. Hence, they are separately enumerated in Rule 1, Section 1(a) of the Interim Rules:

SECTION 1. (a) Cases covered. – These Rules shall govern the procedure to be observed in civil cases involving the following:

(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;
(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;
(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. (Emphasis supplied)

Stockholder/s' suits based on fraudulent or wrongful acts of directors, associates, or officers may also be individual suits or class suits.

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[75] *Rollo* (G.R. No. 172843), p. 60.

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Individual suits are filed when the cause of action belongs to the individual 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.[76] 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.[77]

In this case, respondent Balmores filed an individual suit. His intent was very clear from his manner of describing the nature of his action:

> 1.1 This is an action under Section 1 (a) (1), Rule 1 of the Interim Rules of Procedure for Intra-corporate Controversies, involving devices or schemes employed by, or acts of, the defendants as board of directors, business associates and officers of Pasig Printing Corporation (PPC), amounting to fraud or misrepresentation, **which are detrimental to the interest of the plaintiff as stockholder of PPC**.[78] (Emphasis supplied)

His intent was also explicit from his prayer:

> **WHEREFORE,** plaintiff respectfully prays that the Honorable Court –
>
> . . . .
>
> 2. After notice and due proceedings –
>
> **Declare that the acts of defendant Directors** in allowing defendant VILLAMOR to retain custody of the MC Home checks and encash them upon maturity, as well as their refusal or failure to take any action against defendant VILLAMOR to make him account and deliver the MC Home checks and/or their proceeds to Pasig Printing Corporation **are devices,**

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[76] *Cua, Jr. v. Tan*, G.R. Nos. 181455-56 and 182008, December 4, 2009, 607 SCRA 645, 690 [Per *J.* Chico-Nazario, Third Division], citing J. Campos, Jr. and M. C. L. Campos, *THE CORPORATION CODE: COMMENTS, NOTES AND SELECTED CASES*, Vol. 1, 819 (1990).

[77] *Cua, Jr. v. Tan*, G.R. Nos. 181455-56 and 182008, December 4, 2009, 607 SCRA 645, 690 [Per *J.* Chico-Nazario, Third Division].

[78] *Rollo* (G.R. No. 172843), p. 60.

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> **schemes or acts amounting to fraud that are detrimental to plaintiff's interest as a stockholder of PPC;**[79] (Emphasis supplied)

Respondent Balmores did not bring the action for the benefit of the corporation. Instead, he was alleging that the acts of PPC's directors, specifically the waiver of rights in favor of Villamor's law firm and their failure to take back the MC Home Depot checks from Villamor, were detrimental to his **individual interest as a stockholder. In filing an action, therefore, his intention was to vindicate his individual interest** and not PPC's or a group of stockholders'.

The essence of a derivative suit is that it must be filed on behalf of the corporation. This is because the cause of action belongs, primarily, to the corporation. The stockholder who sues on behalf of a corporation is merely a nominal party.

Respondent Balmores' intent to file an individual suit removes it from the coverage of derivative suits.

III

Respondent Balmores has no cause of action that would entitle him to the reliefs sought

Corporations have a personality that is separate and distinct from their stockholders and directors. A wrong to the corporation does not necessarily create an individual cause of action. "A cause of action is the act or omission by which a party violates the right of another."[80] A cause of action must pertain to complainant if he or she is to be entitled to the reliefs sought.

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[79] *Id.* at 71–72.

[80] RULES OF COURT, Rule 2, Sec. 2.

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Thus, in *Cua v. Tan*,[81] this court emphasized:

> . . . 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.[82]

In this case, respondent Balmores did not allege any cause of action that is personal to him. His allegations are limited to the facts that PPC's directors waived their rights to rental income in favor of Villamor's law firm without consideration and that they failed to take action when Villamor refused to turn over the amounts to PPC. These are wrongs that pertain to PPC. Therefore, the cause of action belongs to PPC — not to respondent Balmores or any stockholders as individuals.

For this reason, respondent Balmores is not entitled to the reliefs sought in the complaint. Only the corporation, or arguably the stockholders as a group, is entitled to these reliefs, which should have been sought in a proper derivative suit filed on behalf of the corporation.

PPC will not be bound by a decision granting the application for the appointment of a receiver or management committee. Since it was not impleaded in the complaint, the courts did not acquire jurisdiction over it. On this matter, it is an indispensable party, without which, no final determination can be had.

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[81] G.R. Nos. 181455-56 and 182008, December 4, 2009, 607 SCRA 645 [Per *J.* Chico-Nazario, Third Division].

[82] *Id*. at 690.

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Hence, it is not only respondent Balmores' failure to implead PPC that is fatal to his action, as petitioners point out. It is the fact that he alleged no cause of action that pertains personally to him that disqualifies him from the reliefs he sought in his complaint.

On this basis alone, the Court of Appeals erred in giving due course to respondent Balmores' petition for *certiorari*, reversing the trial court's decision, and issuing a new order placing PPC under receivership and creating an interim management committee.

IV

Appointment of a management committee was not proper

Assuming that respondent Balmores has an individual cause of action, the Court of Appeals still erred in placing PPC under receivership and in creating and appointing a management committee.

A corporation may be placed under receivership, or management committees may be created to preserve properties involved in a suit and to protect the rights of the parties under the control and supervision of the court.[83] Management committees and receivers are appointed when the corporation is in imminent danger of "(1) [d]issipation, loss, wastage or destruction of assets

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[83] *See also* Interim Rules, Rule 9, Sec. 3:

SEC. 3. Receiver and management committee as officers of the court. – The receiver and the members of the management committee in the exercise of their powers and performance of their duties are considered officers of the court and shall be under its control and supervision.

The principle behind receivership under Rule 59 of the Rules of Court as explained in F. D. REGALADO, REMEDIAL LAW COMPENDIUM, Vol. 1, 9th ed., 732 (2005), citing *Compañia General de Tabacos v. Gauzon and Pomar*, 20 Phil. 261 (1911) [Per *J.* Johnson, *En Banc*]; *Normandy v. Duque*, 139 Phil. 800 (1969) [Per *J.* Barredo, *En Banc*]; and *Mallari v. Court of Appeals, et al.*, 192 Phil. 679 (1981) [Per *J.* Melencio-Herrera, First Division] **may be applied by analogy to receivership under the Interim Rules**.

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or other properties; and (2) [p]aralysation of its business operations that may be prejudicial to the interest of the minority stockholders, parties-litigants, or the general public."[84]

Applicants for the appointment of a receiver or management committee need to establish the confluence of these two requisites. This is because appointed receivers and management committees will immediately take over the management of the corporation and will have the management powers specified in law.[85] This may have a negative effect on the operations and affairs of the corporation with third parties,[86] as persons who are more familiar with its operations are necessarily dislodged from their positions in favor of appointees who are strangers to the corporation's operations and affairs.

Thus, in *Sy Chim v. Sy Siy Ho & Sons, Inc.*,[87] this court said:

> . . . the creation and appointment of a management committee and a receiver is an extraordinary and drastic remedy to be exercised with care and caution; and only when the requirements under the Interim Rules are shown. It is a drastic course for the benefit of the minority stockholders, the parties-litigants or the general public are allowed only under pressing circumstances and, when there is inadequacy, ineffectual or exhaustion of legal or other remedies . . . The power of the court to continue a business of a corporation . . . must be exercised with the greatest care and caution. There should be a full consideration of all the attendant facts, including the interest of all the parties concerned.[88]

PPC waived its rights, without any consideration in favor of Villamor. The checks were already in Villamor's possession. Some of the checks may have already been encashed. This court takes judicial notice that the goodwill money of

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[84] Interim Rules, Rule 9, Sec. 1.

[85] *Sy Chim v. Sy Siy Ho & Sons, Inc.*, 516 Phil. 256, 282 (2006) [Per *J.* Callejo, Sr., First Division].

[86] *Id.* at 284.

[87] 516 Phil. 256 (2006) [Per *J.* Callejo, Sr., First Division].

[88] *Id.* at 284.

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₱18,000,000.00 and the rental payments of ₱4,500,000.00 every month are not meager amounts only to be waived without any consideration. It is, therefore, enough to constitute loss or dissipation of assets under the Interim Rules.

Respondent Balmores, however, failed to show that there was an imminent danger of paralysis of PPC's business operations. Apparently, PPC was earning substantial amounts from its other sub-lessees. Respondent Balmores did not prove otherwise. He, therefore, failed to show at least one of the requisites for appointment of a receiver or management committee.

V

The Court of Appeals had no jurisdiction to appoint the receiver or management committee

The Court of Appeals has no power to appoint a receiver or management committee. The Regional Trial Court has original and exclusive jurisdiction[89] to hear and decide intra-corporate

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[89] Pres. Decree 902-A (1976), otherwise known as SEC Reorganization Act.

Sec. 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:

(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 stockholder, partners, members of associations or organizations registered with the Commission;

(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; and

(c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

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controversies,[90] including incidents of such controversies.[91] These incidents include applications for the appointment of receivers or management committees.

"The receiver and members of the management committee . . . are considered officers of the court and shall be under its control and supervision."[92] They are required to report to the court on the status of the corporation within sixty (60) days from their appointment and every three (3) months after.[93]

When respondent Balmores filed his petition for *certiorari* with the Court of Appeals, there was still a pending action in the trial court. No less than the Court of Appeals stated that it allowed respondent Balmores' petition under Rule 65 because the order or resolution in question was an interlocutory one. This means that jurisdiction over the main case was still lodged with the trial court.

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[90] Rep. Act No. 8799 (2000), otherwise known as The Securities Regulation Code.

> Sec. 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 these 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 payments/rehabilitation cases filed as of 30 June 2000 until finally disposed. (Underscoring supplied)

See also Interim Rules, Rule 1, Sec. 9.

> Sec. 9. *Assignment of cases.* - All cases filed under these Rules shall be tried by judges designated by the Supreme Court to hear and decide cases transferred from the Securities and Exchange Commission to the Regional Trial Courts and filed directly with said courts pursuant to Republic Act No. 8799, otherwise known as the Securities Regulation Code. (Underscoring supplied)

[91] Interim Rules, Rule 9, Sec. 1.

[92] Interim Rules, Rule 9, Sec. 3.

[93] Interim Rules, Rule 9, Sec. 10.

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The court making the appointment controls and supervises the appointed receiver or management committee. Thus, the Court of Appeals' appointment of a management committee would result in an absurd scenario wherein while the main case is still pending before the trial court, the receiver or management committee reports to the Court of Appeals.

WHEREFORE, the petitions are **GRANTED**. The decision of the Court of Appeals dated March 2, 2006 and its resolution dated May 29, 2006 are **SET ASIDE**.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 180144. September 24, 2014]

LEONARDO BOGNOT, *petitioner, vs.* **RRI LENDING CORPORATION, represented by its General Manager, DARIO J. BERNARDEZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ARE PROPER.— As a rule, the Court's jurisdiction in a Rule 45 petition is limited to the review of pure questions of law. Appreciation of evidence and inquiry on the correctness of the appellate court's factual findings are not the functions of this Court; we are not a trier of facts. A question of law exists when the doubt or dispute relates to the application of the law on given facts. On the other hand, a question of fact exists when the doubt or dispute relates to the truth or falsity of the parties' factual allegations.