SECOND DIVISION

[G.R. No. 260170. May 19, 2025]

ALFREDO V. TAN, PETITIONER, VS. APOLINARIO SUNTAY AND MA. VICTORIA S. EVANGELISTA,* RESPONDENTS.

R E S O L U T I O N

LOPEZ, M., J.:

Derivative suits cannot prosper in the absence of any or some of the requisites enumerated in the Interim Rules of Procedure for Intra-Corporate Controversies under Republic Act No. 8799[1] (IRPIC).[2] In this October 27, 2022 Motion for Reconsideration,[3] petitioner Alfredo V. Tan (Alfredo) implores the Court to take a second hard look on the established factual circumstances surrounding this case and apply the exacting legal standards governing derivative suits under the IRPIC.

The facts follow.

Joson Realty Corporation (JRC) is a corporation engaged in the business of realty development. Alfredo is JRC's corporate secretary while Manuel S. Joson and Rosario S. Joson-Suntay, along with their family members (Joson et al.), own majority of its outstanding capital stock. On the other hand, respondents Apolinario Suntay (Apolinario) and Ma. Victoria S. Evangelista (Ma. Victoria) are minority stockholders of JRC.[4]

In 2013, through a Verified Petition[5] (Petition) before the Regional Trial Court (RTC) of Quezon City docketed as Civil Case No. R-QZN-13-03303-CV, Apolinario and Ma. Victoria initiated a stockholder's derivative suit for "Injunction, Accounting, Appointment of Management Committee, and Damages."[6] Apolinario and Ma. Victoria averred that through corporate maneuvers, Alfredo, as corporate secretary, along with Joson et al., successfully ousted Apolinario as a director of JRC. Apolinario and Ma. Victoria also accused Alfredo and the other directors of passing, approving, and implementing acts and resolutions resulting in the dissipation and wastage of corporate assets; entering into contracts prejudicial to JRC's interest; and improperly declaring dividends—all without the knowledge of Apolinario and Ma. Victoria, and without a proper Board meeting.[7]

Alfredo and Joson et al. filed their Answer with Compulsory Counterclaim, raising affirmative defenses.[8] They also formalized their supplication for the immediate dismissal of the derivative action in a Motion to Dismiss on the grounds that: (a) Apolinario and Ma. Victoria failed to comply with the procedure prescribed by the IRPIC; (b) the Petition is insufficient in form and substance; and (c) the case is a nuisance or harassment suit.[9]

The RTC denied[10] the Motion to Dismiss, finding that the Petition in the derivative suit complied with the procedural and substantive requirements under the IRPIC.[11] It also held that there was no indication that the Petition was a nuisance or a harassment suit.[12] Subsequently, Alfredo filed a Motion to Defer Audit[13] of JRC's corporate assets, as previously ordered by the RTC, insisting that the audit was premature since he had a pending Motion to Dismiss before the RTC and a Petition for *Certiorari* before the Court, but this was also denied.[14] The trial court emphasized that the RTC already denied Alfredo's Motion to Dismiss. Likewise, the Court's First Division had already decided that no grave abuse of discretion was committed when the RTC chose AMC & Associates as external auditor.[15]

Alfredo then filed a Petition for *Certiorari*[16] under Rule 65 of the Rules of Court (Rules) before the Court of Appeals (CA) docketed as CA-G.R. SP No. 151001. In its assailed October 21, 2020 Decision,[17] the CA dismissed Alfredo's Petition for *Certiorari* ruling that the RTC did not gravely abuse its discretion when it denied the Motions to Dismiss and Defer Audit. The CA also found that Alfredo lacks the requisite *locus standi* to file the *certiorari* as he was not a member of JRC's Board of Directors,[18] thus:

> **WHEREFORE**, the *Petition* is **DISMISSED**. The *Orders* dated March 28, 2017 and April 3, 2017 of the Regional Trial Court of Quezon City, Branch 93, in Civil Case No. R-QZN-13-03303-CV, **STAND.**
>
> **SO ORDERED.**[19] (Emphasis in the original)

Alfredo moved for reconsideration,[20] but was denied in the assailed February 14, 2022 Resolution.[21]

Alfredo then elevated the matter to the Court via a Petition for Review on *Certiorari*[22] under Rule 45 of the Rules. He argued that he had the standing to file the Petition for *Certiorari* before the CA. Petitioner Alfredo also insisted that the derivative suit should be dismissed for failure to comply with the requirements of a valid derivative suit under the IRPIC.[23] In a Resolution,[24] the Court denied the Petition for *Certiorari* "for failure to show any substantial, special[,] or important reason to warrant the exercise of [its] discretionary power to review the challenged [D]ecision and [R]esolution."[25]

Hence, this Motion for Reconsideration[26] where petitioner asserts his *locus standi* to file the *certiorari* case before the CA and the propriety of dismissing the derivative suit for failure to comply with the exacting requirements under the IRPIC.[27] In compliance with the Court's directive, respondents Apolinario and Ma. Victoria filed a Comment and Opposition (Re: Motion for Reconsideration dated 27 October 2022) and Manifestation,[28] arguing that the Motion for Reconsideration is a mere rehash of the Petition for *Certiorari* and in any case, the denied Motion to Dismiss has no legal effect for being a prohibited pleading.[29]

We resolve.

Upon further judicial review and deliberation, the Court finds that certain material facts and controlling legal standards that are dispositive to the instant matter were not fully appreciated or applied with the necessary precision in the assailed CA Decision and Resolution. Hence, We reconsider.

Petitioner is a real party in interest

Rule 3, Section 2 of the Rules defines a real party in interest as "the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit." In the context of a derivative suit, corporate directors or officers are made liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties.[30] As such, any judgment or order rendered in such a suit would have a direct legal effect, either favorable or adverse, on the officers or directors impleaded.

In this case, petitioner was impleaded in his official capacity as corporate secretary of JRC. The Petition specifically attributed to him acts allegedly committed in the performance of his duties as secretary.[31] Contrary to the findings of the CA, petitioner is clearly a real party in interest, having a direct and substantial stake in the outcome of the proceedings. As such, he is entitled to avail himself of the appropriate remedies provided under the Rules, particularly since he alleges that the trial court acted with grave abuse of discretion. Under Rule 65, Section 1 of the Rules, a petition for *certiorari* may be filed when any tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. In this instance, petitioner, as an aggrieved party, may properly resort to *certiorari* to assail the trial court's orders. The CA thus erred in finding that petitioner had no *locus standi* to question on *certiorari* the RTC's interlocutory orders, which were averse to his interests.

Non-compliance with the requisites of a valid derivative suit

At the outset, We recognize the limited jurisdiction of the CA in *certiorari* proceedings. The only issue before the CA was whether the RTC gravely abused its discretion in denying the Motion to Dismiss and Motion to Defer Audit. Nonetheless, We also

consider that the main case has been pending with the RTC for almost 12 years or more than a decade now. As will be discussed below, the flawed Petition warrants its outright dismissal. Verily, based on the policy of judicial economy and for practical considerations, the Court is inclined to resolve the core issue directly to avoid further protracted or futile proceedings. To be sure, the unnecessary delay in this case's resolution would only be detrimental to the parties—all of whom have the common interest of having a well-organized and controlled management—particularly the corporation, which bears the brunt of the prolonged uncertainty. Hence, We discuss the propriety of the dismissal.

Rule 8, Section 1 of the IRPIC states:

> 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) [They] [were] 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) [*They*] *exerted all reasonable efforts, and* ***allege*****[]** ***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 a nuisance or harassment suit, the court shall forthwith dismiss the case*. (Emphasis supplied)

It is well-settled that derivative suits cannot prosper in the absence of any or some of the above-enumerated requisites.[32] After a scrutiny of the established facts, We find that the second requisite does not exist in this case.

The IRPIC expressly requires that the stockholder or member exert all reasonable efforts to exhaust all remedies available under the articles of incorporation, by-laws, and laws or rules governing the corporation or partnership to obtain the desired relief before instituting a derivative suit. *Such fact must be alleged with particularity in the complaint.* The obvious intent behind this rule is to make the derivative suit a final recourse after all the remedies to obtain the relief sought have failed.[33] The corporation, through its board of directors, must first be given the opportunity to internally resolve the grievance before being subjected to the expenses and rigors of litigation.

A closer re-examination of the Petition initiating a derivative action reveals that respondents simply made general asseverations that they opposed the questioned acts through letters and meetings, but failed to demonstrate with particularity what specific remedies under the corporation's by-laws, articles of incorporation, or applicable laws they pursued or attempted to invoke before resorting to judicial intervention. We stress, the requirement of particularity is not a mere procedural formality but a substantive prerequisite that ensures that derivative suits are not prematurely or improperly filed. [34] The Petition alleged:

> 37.1 [Apolinario] and his siblings have exhausted all intra-corporate means so that all the afore-mentioned questionable, anomalous, irregular[,] and illegal acts, among others, of the Respondents be sufficiently addressed and corrected. [Apolinario], among others, confronted them during meetings and sent correspondences, such as those dated December 2012, dated 8 January 2013, and dated February 2013.[35]

These letters and meetings were likewise the CA's basis in ruling that respondents' Petition was compliant with the second requirement:

> 10. Believing in the sincerity of such directive and assurance, [Apolinario], through counsel, sent a Letter dated 20 December 2012 making an exhaustive enumeration of the questions of [Apolinario] and his siblings on the (i) declaration of dividends, (ii) GIS for the year 2011, (iii) assets of Petitioner Corporation, and (iv) the liabilities of the Corporation.
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> . . . .
>
> 12. Finally, almost two (2) long months after the first letter of [Apolinario], the latter received through counsel a written response signed by [Alfredo], expressly turning down the request for information.
>
> . . . .
>
> 13. [Apolinario], nonetheless, still persevered and brought his concerns in a meeting held in February 2013 attended by all the Respondents, except Mr. Conrad and Miss Lot. [Apolinario] distinctly raised the matter on the shareholdings. Respondents, however, just evaded the same by stating that the transfer of shareholdings has long been approved.[36]

Jurisprudence instructs that the attempt to settle disputes or oppose questioned acts can hardly be considered "all reasonable efforts to exhaust all remedies available."[37] In *Ago Realty & Development Corporation v. Ago*,[38] citing *Yu v. Yukayguan*,[39] We categorically ruled that:

> The allegation of respondent. . . of his repeated attempts to talk to petitioner. . . regarding their dispute hardly constitutes "all reasonable efforts to exhaust all remedies available." *Respondents did not refer to or mention at*

> *all any other remedy under the articles of incorporation or by-laws* of Winchester, Inc. available for dispute resolution among stockholders, which respondents unsuccessfully availed themselves of. And *the Court is not prepared to conclude that the articles of incorporation and by-laws of Winchester, Inc. absolutely failed to provide for such remedies*.[40] (Emphasis supplied)

Similarly, in this case, respondents' vague reference to opposition during meetings or through unspecified correspondences falls short of the level of specificity and effort required by law. The failure to state with particularity the relevant provisions in the articles of incorporation, by-laws, or applicable laws and rules governing JRC by which respondents could have sought their desired relief prevents the Court from concluding that no adequate remedy existed other than recourse to a derivative suit. Without such showing, judicial intervention is premature.

Accordingly, the CA gravely erred in holding that respondents' Petition satisfied the requisites of the IRPIC.

The CA nevertheless ruled that the RTC committed no grave abuse of discretion in denying the Motion to Dismiss for being a prohibited pleading under Rule 1, Section 8 of the IRPIC.

We disagree.

While a motion to dismiss is generally disallowed in intra-corporate disputes, being a prohibited pleading under the IRPIC, We find that the derivative suit in this case is dismissible, not due to procedural technicalities, but for lack of jurisdiction. It bears emphasis that without compliance with all the requisites of a valid derivative suit, the RTC, sitting as a special commercial court, is *without jurisdiction* to hear and proceed with the case. In *Reyes v. Regional Trial Court of Makati, Branch 142*,[41] We emphatically ruled that:

> [The] bare claim that the complaint is a derivative suit will not suffice to *confer jurisdiction on the RTC (as a special commercial court). . .* [when] the requisites for the existence of a derivative suit [are not complied with]. These requisites are:
>
> a. the party bringing suit should be a shareholder during the time of the act or transaction complained of, the number of shares not being material;
>
> b. *the party 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 jailed or refused to heed his plea*; and
>
> c. the cause of action actually devolves on the corporation; the wrongdoing or harm having been or being caused to the

> corporation and not to the particular stockholder bringing the suit.
>
> *Based on these standards, we hold that the allegations of the present complaint do not amount to a derivative suit*.[42] (Emphasis supplied, citations omitted)

Thus, while a motion to dismiss is procedurally barred under the IRPIC, the court is not precluded from dismissing the case *motu proprio* or giving due course to the substantive grounds raised, especially when the complaint or petition suffers from a fatal jurisdictional defect. Simply put, the dismissal is warranted not for procedural infirmities arising from a motion to dismiss, but because the petition itself fails to establish jurisdiction stemming from noncompliance with the essential requisites of a derivative suit.

Conclusion

It has long been settled that "a derivative suit is an equitable exception to the rule that the corporate power of suit is exercisable only through the board of directors."[43] To validly resort to this equitable procedural device, all the requisites laid down by law and procedure for its institution must be satisfied.[44] Otherwise, courts must deny recourse absent compliance with any of the requisites under the law or rules,[45] regardless of a motion to dismiss the action. These procedural safeguards serve to deter abuse, promote accountability, and uphold the fundamental rule that the right to sue in corporate matters rests with the corporation alone. As the Court aptly held in *Yu*:[46]

> 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. Hence, a stockholder may sue for mismanagement, waste[,] or dissipation of corporate assets because of a special injury to [them] for which [they] [are] otherwise without redress. 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 [t]ake suitable measures for its protection. The basis of a stockholder's suit is always one in equity. However, it cannot prosper without first complying with the legal requisites for its institution.[47]

FOR THESE REASONS, the October 27, 2022 Motion for Reconsideration is **GRANTED**. The Court's August 31, 2022 Resolution is **SET ASIDE**. The October 21, 2020 Decision and February 14, 2022 Resolution of the Court of Appeals in CA-G.R. SP No. 151001 are **REVERSED**. Civil Case No. R-QZN-13-03303-CV, entitled *Jason Realty Corporation v. Manuel S. Joson, et al.*, is **DISMISSED**.

SO ORDERED.

Leonen, SAJ. (Chairperson), Lazaro-Javier, and *Kho, Jr., JJ.*, concur.
J. Lopez, [**] *J.*, on official business.

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[*] Also referred to as "Ma. Victoria S. Suntay-Evangelista" in some parts of the *rollo*.

[**] On official business.

[1] A.M. No. 01-2-04-SC (2001).

[2] **Metropolitan Bank & Trust Company (METROBANK) v. Salazar Realty Corporation**, 920 Phil. 703, 731-733 (2022) [Per J. Gaerlan, First Division].

[3] *Rollo*, pp. 268-292.

[4] *Id.* at 6-7.

[5] *Id.* at 29-56.

[6] *Id.* at 29.

[7] *Id.* at 31-42.

[8] *Id.* at 8.

[9] *Id.* at 57-60.

[10] *Id.* at 74-76. The March 28, 2017 Order in Civil Case No. R-QZN-13-03303-CV was penned by Presiding Judge Arthur O. Malabaguio of Branch 93, Regional Trial Court, Quezon City.

[11] *Id.* at 75-76.

[12] *Id.*

[13] *Id.* at 63-67.

[14] *Id.* at 77-78. The April 3, 2017 Order in Civil Case No. R-QZN-13-03303-CV was penned by Presiding Judge Arthur O. Malabaguio of Branch 93, Regional Trial Court, Quezon City.

[15] *Id.*

[16] *Id.* at 79-90.

[17] *Id.* at 223-236. The Decision in CA-G.R. SP No. 151001 was penned by Associate Justice Gabriel T. Robeniol, with the concurrence of Associate Justices Ruben Reynaldo G. Roxas and Carlito B. Calpatura of the Special Fourteenth Division, Court of Appeals, Manila.

[18] *Id.* at 226-235.

[19] *Id.* at 236.

[20] *Id.* at 237-249.

[21] *Id.* at 251-253.

[22] *Id.* at 3-28.

[23] *Id.* at 10-24.

[24] *Id.* at 266-267.

[25] *Id.* at 266.

[26] *Id.* at 268-292.

[27] *Id.* at 270-290.

[28] *Id.* at 295-303.

[29] *Id.* at 296.

[30] **Yu v. Yukayguan**, 607 Phil. 581, 610 (2009) [Per Chico-Nazario, Third Division].

[31] *Rollo*, p. 30, 44-53.

[32] **Metropolitan Bank & Trust Company v. Salazar Realty Corporation**, 920 Phil. 703, 731-733 (2022) [Per J. Gaerlan, First Division].

[33] **Ago Realty & Development Corporation v. Ago**, 865 Phil. 797, 825 (2019) [Per J. A. Reyes, Jr., Third Division].

[34] **Ching v. Subic Bay Golf and Country Club, Inc.**, 742 Phil. 606, 622 (2014) [Per J. Leonardo-De Castro, First Division].

[35] *Rollo*, p. 43.

[36] *Id.* at 232.

[37] **Ago Realty & Development Corporation v. Ago**, 865 Phil. 797, 825 (2019) [Per J. A. Reyes, Jr., Third Division].

[38] *Id.*

[39] 607 Phil. 581, 612 (2009) [Per Chico-Nazario, Third Division].

[40] **Ago Realty & Development Corporation (ARDC) v. Ago**, 865 Phil. 797, 825-826 (2019) [Per J. A. Reyes, Jr., Third Division].

[41] 583 Phil. 591 (2008) [Per J. Brion, Second Division].

[42] *Id.* at 616.

[43] **Metropolitan Bank & Trust Company v. Salazar Realty Corporation**, 920 Phil. 703, 732 (2022) [Per J. Gaerlan, First Division].

[44] *Id.* at 732-733.

[45] *Id.* at 733. *See also* **Ago Realty & Development Corporation v. Ago**, 865 Phil. 797, 822-826 (2019) [Per J. A. Reyes, Jr., Third Division]; **Forest Hills Golf and Country Club, Inc. v. Fil-estate Properties, Inc.**, 790 Phil. 729, 737-745 (2016) [Per J. Del Castillo, Second Division]; **Ching v. Subic Bay Golf and Country Club, Inc.**, 742 Phil. 606, 621-622 (2014) [Per J. Leonardo-De Castro, First Division].

[46] 607 Phil. 581 (2009) [Per Chico-Nazario, Third Division].

[47] *Id.* at 610.

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