SECOND DIVISION

[G.R. No. 206649. July 20, 2016]

FOREST HILLS GOLF AND COUNTRY CLUB, INC., represented by RAINIER L. MADRID, in a derivative capacity as shareholder and club member, *petitioner, vs.* **FIL-ESTATE PROPERTIES, INC., and FIL-ESTATE GOLF DEVELOPMENT, INC.,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; COURTS; JURISDICTION; JURISDICTION IS CONFERRED BY LAW AND IS DETERMINED BY THE MATERIAL ALLEGATIONS OF THE COMPLAINT, CONTAINING THE CONCISE STATEMENT OF ULTIMATE FACTS OF A PLAINTIFF'S CAUSE OF ACTION; JURISDICTION OVER INTRACORPORATE DISPUTES, INCLUDING DERIVATIVE SUITS, IS VESTED IN THE REGIONAL TRIAL COURTS DESIGNATED AS SPECIAL COMMERCIAL COURTS.— It is a fundamental principle that jurisdiction is conferred by law and is determined by the material allegations of the complaint, containing the concise statement of ultimate facts of a plaintiff's cause of action. x x x. Based on the x x x allegations, it is clear that Madrid filed a derivative suit on behalf of petitioner FHGCCI to compel respondents FEPI and FEGDI to complete the golf course and country club project and to render an accounting of all works done, existing work-in-progress and, if any, differential backlog. The fact that petitioner FHGCCI denominated the Complaint as a derivative suit for specific performance is sufficient reason for the RTC to dismiss it for lack of jurisdiction, as the RTC where the Complaint was raffled is not a special commercial court. Upon the enactment of RA No. 8799, jurisdiction over intra-corporate disputes, including derivatives suits, is now vested in the RTCs designated as special commercial courts by this Court pursuant to A.M. No. 00-11-03-SC promulgated on November 21, 2000.

2. COMMERCIAL LAW; CORPORATIONS; INTERIM RULES OF PROCEDURE GOVERNING INTRA-CORPORATE CONTROVERSIES; INTRA-CORPORATE CONTROVERSIES, WHEN PRESENT.— Petitioner FHGCCI's contention that the instant case does not involve an intra-corporate controversy as it was filed against respondents FEPI and FEGDI as developers, and not as shareholders of the corporation holds no water. Apparent in the Complaint are allegations of the interlocking directorship of the Board of Directors of petitioner FHGCCI and respondents FEPI and FEGDI, the conflict of interest of the Board of Directors of petitioner FHGCCI, and their bad faith in carrying out their duties. Likewise alleged is that respondent FEPI and, later, respondent FEGDI are shareholders of petitioner FHGCCI which under the project agreement, respondent FEPI was tasked to perform the development and construction work and other obligations and undertakings of the project as full payment of its subscription to the authorized capital stock of petitioner FHGCCI, which it later assigned to respondent FEGDI. Considering these allegations, we find that, contrary to the claim of petitioner FHGCCI, there are unavoidably intra-corporate controversies intertwined in the specific performance case.

3. ID.; ID.; ID.; DERIVATIVE SUIT; THE CORPORATION'S POWER TO SUE IS LODGED WITH ITS BOARD OF DIRECTORS OR TRUSTEES, BUT WHEN ITS OFFICIALS REFUSE TO SUE, OR ARE THE ONES TO BE SUED, OR HOLD CONTROL OF THE CORPORATION, AN INDIVIDUAL STOCKHOLDER MAY BE PERMITTED TO INSTITUTE A DERIVATIVE SUIT TO ENFORCE A CORPORATE CAUSE OF ACTION ON BEHALF OF A CORPORATION IN ORDER TO PROTECT OR VINDICATE ITS RIGHTS.— [A] derivative suit is a remedy designed by equity as a principal defense of the minority shareholders against the abuses of the majority. Under the Corporation Code, the corporation's power to sue is lodged with its board of directors or trustees. However, when its officials refuse to sue, or are the ones to be sued, or hold control of the corporation, an individual stockholder may be permitted to institute a derivative suit to enforce a corporate cause of action on behalf of a corporation in order to protect or vindicate its rights. In such actions, the corporation is the real party in interest, while the stockholder suing on behalf of

the corporation is only a nominal party. Considering its purpose, a derivative suite, therefore, would necessarily touch upon the internal affairs of a corporation. It is for this reason that a derivative suit is among the cases covered by the Interim Rules of Procedure Governing Intra-Corporate Controversies, A.M. No. 01-2-04-SC, March 13, 2001.

4. ID.; ID.; ID.; ID.; REQUISITES FOR A VALID DERIVATIVE SUIT, NOT COMPLIED WITH.— Corollarily, "[f]or a derivative suit to prosper, it is required that the minority stockholder suing for and on behalf of the corporation must allege in his complaint that he is suing on a derivative cause of action on behalf of the corporation and all other stockholders similarly situated who may wish to join him in the suit." It is also required that the stockholder "should have exerted all reasonable efforts 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 [and that such fact is alleged] with particularity in the complaint." The purpose for this rule is "to make the derivative suit the final recourse of the stockholder, after all other remedies to obtain the relief sought had failed." Finally, the stockholder is also required "to allege, explicitly or otherwise, the fact that there were no appraisal rights available for the acts complained of, as well as a categorical statement that the suit is not a nuisance or a harassment suit." In this case, Madrid, as a shareholder of petitioner FHGCCI, failed to allege with particularity in the Complaint, and even in the Amended Complaint, that he exerted all reasonable efforts to exhaust all remedies available under the articles of incorporation, by-laws, or rules governing the corporation; that no appraisal rights are available for the acts or acts complained of; and that the suit is not a nuisance or a harassment suit. Although the Complaint alleged that demand letters were sent to the Board of Directors of petitioner FHGCCI and that these were unheeded, these allegations will not suffice. Thus, for failing to meet the requirements set forth in Section 1, Rule 8 of the Interim Rules of Procedure Governing Intra-Corporate Controversies, the Complaint, denominated as a derivative suit for specific performance, must be dismissed.

APPEARANCES OF COUNSEL

Madrid Danao & Carullo for petitioner.
Patrick A. Padilla for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

"A derivative action is a suit by a shareholder to enforce a corporate cause of action x x x on behalf of the corporation in order to protect or vindicate [its] rights [when its] officials refuse to sue, or are the ones to be sued, or hold control of [it]."[1] Upon the enactment of Republic Act (RA) No. 8799, otherwise known as "The Securities Regulation Code," jurisdiction over such action now lies with the special commercial courts designated by this Court pursuant to A.M. No. 00-11-03-SC promulgated on November 21, 2000.[2]

This Petition for Review on *Certiorari*[3] under Rule 45 of the Rules of Court assails the Orders dated May 14, 2012[4] and February 1, 2013[5] of the Regional Trial Court (RTC), Branch 74, Antipolo City, in Civil Case No. 10-9042.

Factual Antecedents

On March 31, 1993, Kingsville Construction and Development Corporation (Kingsville) and Kings Properties Corporation (KPC) entered into a project agreement with respondent Fil-Estate Properties, Inc. (FEPI), whereby the latter agreed to finance and cause the development of several parcels of land owned by Kingsville in Antipolo, Rizal, into Forest Hills Residential Estates and Golf and Country Club, a first-class residential area/

---

[1] *Hi-Yield Realty, Inc. v. Court of Appeals,* 608 Phil. 350, 358 (2009).

[2] *Yu v. Yukayguan,* 607 Phil. 581, 606 (2009).

[3] *Rollo,* pp. 17-47.

[4] *Id.* at 48-54; penned by Presiding Judge Mary Josephine P. Lazaro.

[5] *Id.* at 55.

golf-course/commercial center.[6] Under the agreement, respondent FEPI was tasked to incorporate petitioner Forest Hills Golf and Country Club, Inc. (FHGCCI) with an authorized stock of 3,600 shares; and to perform the development and construction work and other undertakings as full payment of its subscription to the authorized capital stock of the club.[7] As to the remaining shares of the club, they agreed that these should be retained by Kingsville in exchange for the parcels of land used for the golf course development.[8]

On July 10, 1995, respondent FEPI assigned its rights and obligations over the project to a related corporation, respondent Fil-Estate Golf Development, Inc. (FEGDI).[9]

On July 19, 1996, Rainier L. Madrid (Madrid) purchased two Class "A" shares at the secondary price of ₱380,000.00 each, and applied for a membership to the club for ₱25,000.00.[10]

Due to the delayed construction of the second 18-Hole Golf Course, Madrid wrote two demand letters dated October 29, 2009 and March 15, 2010 to the Board of Directors of petitioner FHGCCI asking them to initiate the appropriate legal action against respondents FEPI and FEGDI.[11] The Board of Directors, however, failed and/or refused to act on the demand letters.[12]

Thus, on April 21, 2010, Madrid, in a derivative capacity on behalf of petitioner FHGCCI, filed with the RTC of Antipolo City a Complaint for Specific Performance with Damages,[13]

---

[6] *Id*. at 58 and 75.

[7] *Id*.

[8] *Id*.

[9] *Id*.

[10] *Id*. at 61.

[11] *Id*. at 62-63.

[12] *Id*. at 63.

[13] *Id*. at 56-67.

docketed as Civil Case No. 10-9042, against respondents FEPI and FEGDI.[14]

In their Answer with Compulsory Counterclaim,[15] respondents FEPI and FEGDI argued that there is no cause of action against them as petitioner FHGCCI failed to state the contractual and/or legal bases of their alleged obligation; that no prior demand was made to them; that the action is not a proper derivative suit as petitioner FHGCCI failed to exhaust all remedies available under the articles of incorporation and by-laws; and that petitioner FHGCCI failed to implead its Board of Directors as indispensable parties.

Petitioner FHGCCI, in turn, filed a Reply[16] arguing that the case does not involve an intra-corporate controversy and that the exhaustion of intra-corporate remedies was futile and useless as the Board of Directors of petitioner FHGCCI also own respondent FEGDI.

Respondents FEPI and FEGDI filed a Rejoinder[17] followed by a Motion[18] to set their affirmative defenses for preliminary hearing.

Petitioner FHGCCI filed a Motion[19] for leave to amend its Complaint to implead KPC and Kingsville as additional defendants and to include Madrid as additional plaintiff in his personal capacity. Respondents FEPI and FEGDI opposed the Motion.[20]

Ruling of the Regional Trial Court

On May 14, 2012, applying the relationship and nature of controversy tests in *Reyes v. Hon. RTC of Makati, Br. 142*[21]

---

[14] *Id*. at 26.

[15] *Id*. at 206-218.

[16] *Id*. at 219-222.

[17] *Id*. at 223-228.

[18] *Id* at 229-232.

[19] *Id*. at 233-236.

[20] *Id*. at 251-256.

[21] 583 Phil. 591 (2008).

and taking into account the fact that petitioner FHGCCI denominated the Complaint as a derivative suit, the RTC issued an Order[22] dismissing the case for lack of jurisdiction, without prejudice to the re-filing of the same with the proper special commercial court sitting at Binangonan, Rizal. Consequently, the motion for leave to amend the Complaint was mooted.

Feeling aggrieved, petitioner FHGCCI moved for reconsideration[23] but the RTC denied the same in its Order[24] dated February 1, 2013.

Issue

Hence, petitioner FHGCCI directly filed before this Court the instant Petition for Review on *Certiorari*[25] under Rule 45 of the Rules of Court on a pure question of law, raising the sole issue of:

WHETHER OR NOT PETITIONER [FHGCCI'S] ORDINARY CIVIL SUIT FOR SPECIFIC PERFORMANCE WITH DAMAGES AGAINST RESPONDENTS [FEPI AND FEGDI] VIS-A-VIS THE LATTER'S OBLIGATION UNDER THE PROJECT AGREEMENT TO FULLY COMPLETE AND DEVELOP THE FOREST HILLS RESIDENTIAL ESTATES AND GOLF COURSE AND COUNTRY CLUB IS COGNIZABLE BY THE LOWER COURT AS A REGULAR COURT OR BY THE RTC-BINANGONAN, BRANCH 70, AS A SPECIAL COMMERCIAL COURT FOR INTRA-CORPORATE CONTROVERSIES.[26]

Petitioner FHGCCI's Arguments

Petitioner FHGCCI admits that it filed a derivative suit.[27] However, it contends that not all derivative suits involve intra-

---

[22] *Rollo,* pp. 48-54.

[23] *Id*. at 284-298.

[24] *Id*. at 55.

[25] *Id*. at 17-47.

[26] *Id*. at 332-333.

[27] *Id*. at 339-340.

corporate controversies.[28] In this case, it filed a derivative suit for specific performance in order to enforce the project agreement between KPC, Kingsville, and respondents FEPI and FEGDI.[29] And although respondent FEGDI is a stockholder of petitioner FHGCCI, it argues that this does not make the instant case an intra-corporate controversy as the case was filed against respondents FEPI and FEGDI as developers, and not as stockholders of petitioner FHGCCI.[30] In fact, the causes of action stated in the Complaint do not involve intra-corporate controversies, nor do these involve the intra-corporate relations between and among the stockholders and the corporation's officials.[31] Thus, the RTC seriously erred in applying the case of *Reyes*[32] without clearly explaining why the instant case involves an intra-corporate controversy.[33]

Respondents' Arguments

Respondents FEPI and FEGDI, on the other hand, reiterate the arguments raised in their Answer before the RTC, to wit: that petitioner FHGCCI has no cause of action as it failed to present any contract upon which it can base its claim; that the filing of the case is premature as no prior demand was made to respondents FEPI and FEGDI; that the Complaint is not a proper derivative suit as petitioner FHGCCI failed to exhaust all remedies available under the articles of incorporation and by-laws; and that petitioner FHGCCI failed to implead its Board of Directors as indispensable parties.[34] They also maintain that the instant case is an intra-corporate controversy as the allegations in the Complaint clearly show that petitioner FHGCCI is suing respondents FEPI and FEGDI not only as developers but also

---

[28] *Id*. at 340-342.

[29] *Id*. at 343.

[30] *Id*. at 338.

[31] *Id*. at 337-339.

[32] *Supra* note 21.

[33] *Rollo,* pp. 343-347.

[34] *Id*. at 361.

as stockholders of petitioner FHGCCI.[35] And since the instant case involves an intra-corporate controversy, the RTC correctly dismissed the Complaint for lack of jurisdiction, as the RTC is not a special commercial court.[36]

Our Ruling

The Petition lacks merit.

The Complaint, denominated as a derivative suit for specific performance, falls under the jurisdiction of special commercial courts.

Petitioner FHGCCI's main contention is that its Complaint, although denominated as a derivative suit, does not fall under the jurisdiction of special commercial courts, as it does not involve an intra-corporate controversy.

We do not agree.

It is a fundamental principle that jurisdiction is conferred by law and is determined by the material allegations of the complaint, containing the concise statement of ultimate facts of a plaintiff's cause of action.[37]

In this case, petitioner FHGCCI alleged in its Complaint that:

PREFATORY

This is a derivative suit filed by Shareholder and Club Member Rainier Madrid on behalf of [petitioner FHGCCI] to compel [respondents FEPI and FEGDI], to finish the construction and complete development of Club's Arnold Palmer 2nd Nine-Holes Golf Course and the adjunct Country Club Premises.

Despite repeated demands on FHGCCI, which appears **controlled and managed by interlocking directors of [respondents FEPI and**

---

[35] *Id*. at 361-365.

[36] *Id*. at 365-366.

[37] *Heirs of Telesforo Julao v. De Jesus,* G.R. No. 176020, September 29, 2014, 736 SCRA 596, 605, citing *Padlan v. Spouses Dinglasan,* 707 Phil. 83, 91 (2013).

FEGDI] as an "OLD BOYS CLUB," and therefore guilty of grave conflict of interest to initiate legal actions against developer [respondent] FEGDI *vis-a-vis* the completion of the Club's Arnold Palmer 2nd Nine-Holes Golf Course and the promised Country Club Facilities, **FHGCCI has failed, shirked, and refused to sue the [respondents FEPI and FEGDI].**

This BAD FAITH inaction and refusal to sue [respondents FEPI and FEGDI] by the FHGCCI Board of Directors is definitely prejudicial to FHGCCI and its members as they have been long deprived the maximum use of the promised Full 36-Hole Golf Course and Country Club Amenities, thereby rendering them in fundamental and material breach of their SEC Disclosure Statements, Marketing and Sales Contracts.

The FHGCCI Board of Directors [are] guilty of grave conflict of interest as Founder Shareholders Noel M. Cariño, Robert John L. Sobrepeña, Ferdinand T. Santos and Enrique Sobrepeña, Jr. are also the majority Board of Directors of [respondent] FEPI and later [respondent] FEGDI, who for more than ten (10) years NOW **has failed and refused to complete the Project for which they should have sued [respondents] FEPI [and] FEGDI as early as 2000.**

Indeed, the control, exclusive management and operations of FHGCCI, which should have been turned-over to the General Membership, has been illegally withheld, retained and continued to be enjoyed by FHGCCI Board of Directors via their abusive, void and illegal Founder's Shares, subject now of a separate suit to compel turnover of the FHGCCI to its General Membership.

The patent interlocking directorship of FHGCCI and [respondents] FEPI /FEGDI sufficiently shows the abuse, high handed and condescending strong arm posture of FHGCCI Board of Directors in failing or refraining from suing [respondents] FEPI [and] FEGDI as the developer for the full and total completion of [the] 36-Hole Golf Course and adjunct Country Club facilities.

HENCE, THIS DERIVATIVE SUIT.

x x x x x x x x x

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

x x x x x x x x x

4. On June 29, 1995, **[respondent] FEPI incorporated the Golf and Country Club Company** - [FHGCCI] x x x.

Per FHGCCI's Articles of Incorporation, fifty (50%) percent of its authorized member shares appears to have been distributed as follows:

SUBSCRIBERS	NUMBER AND KIND OF SHARES
1. Noel M. Cariño	1 Founder's Share
2. Robert John L. Sobrepeña	1 Founder's Share
3. Ferdinand T. Santos	1 Founder's Share
4. Sabrina T.Santos	1 Founder's Share
5. Enrique Sobrepeña, Jr.	1 Founder's Share
6. Johnson Ong	1 Founder's Share
7. Romeo G. Carlos	1 Founder's Share
8. Manuel Yu	1 Founder's Share
9. FEGDI	537 Class "A", 190 Class "B", 292 Class "C", 146 Class "D"; total = 1165
10. Kings Properties Corp.	290 Class "A", 102 Class "B", 292 Class "C", 146 Class "D"; total = 627

x x x x x x x x x

10. Worse, **with manifest intention of giving undue benefit, gain and/or advantage to [respondents] FEPI/FEGDI and to retain control of FHGCCI via the Founders' Shares, the FHGCCI Board of Directors appear to have deliberately failed, shirked and refused to sue, act and demand that [respondents] FEPI/FEGDI complete and finish the construction and/or turn-over of the second golf course,** specifically the Arnold Palmer 2nd Nine-Holes and the additional "Country Club" premises and adjunct country club facilities, to enable them, as "Founder Shareholders," to hold on to, continue their control and exclusive management of the Club, as an "OLD BOYS CLUB," to the damage and prejudice of FHGCCI, and its members whose corporate rights remain IN LIMBO to date.

x x x x x x x x x

13. To date, however, **the FHGCCI Board of Directors intentionally and deliberately failed and/or refused to heed Shareholder and Club Member Rainier L. Madrid and numerous undisclosed members of FHGCCI's above valid and just demand,**

to the damage and prejudice of [petitioner] FHGCCI and its Members.

x x x x x x x x x

2.2 As shown, for more than ten (10) years now from the stipulated full completion of the 2nd 18-Holes Arnold Palmer Golf Course, and the country club facilities in September 2000, **the FHGCCI Board of Directors, being guilty of apparent conflict of interest prescinding from their interlocking directorships, have deliberately and purposely failed, shirked and/or refused to demand and sue [respondents] developer FEPI/FEGDI to fully complete the Project,** especially the 36-Hole Golf Course, and adjunct Country Club and commercial complex amenities, to the grave damage and prejudice of [petitioner] FHGCCI and its Members. It is pure and simple, SYNDICATED ESTAFA.

2.3. Consequently, [respondents FEPI and FEGDI], jointly and severally, should be compelled, ordered and directed to fully perform, finish, complete and turn-over the whole 36-Hole Golf Course and Country Club Amenities soonest.

x x x x x x x x x

3.2. Additionally, [respondents] FEPI and FEGDI must be ordered to render an accounting of ALL work done, EXISTING work-in-progress, if any, and differential backlog in connection with their performance and delivery of the Project, including the contracted 36-Hole Golf Course and Country Club Amenities.[38] (Emphasis supplied)

Based on the foregoing allegations, it is clear that Madrid filed a derivative suit on behalf of petitioner FHGCCI to compel respondents FEPI and FEGDI to complete the golf course and country club project and to render an accounting of all works done, existing work-in-progress and, if any, differential backlog. The fact that petitioner FHGCCI denominated the Complaint as a derivative suit for specific performance is sufficient reason for the RTC to dismiss it for lack of jurisdiction, as the RTC where the Complaint was raffled is not a special commercial court. Upon the enactment of RA No. 8799, jurisdiction over

[38] *Rollo,* pp. 56-64.

intra-corporate disputes, including derivatives suits, is now vested in the RTCs designated as special commercial courts by this Court pursuant to A.M. No. 00-11-03-SC promulgated on November 21, 2000.[39]

Petitioner FHGCCI's contention that the instant case does not involve an intra-corporate controversy as it was filed against respondents FEPI and FEGDI as developers, and not as shareholders of the corporation holds no water. Apparent in the Complaint are allegations of the interlocking directorships of the Board of Directors of petitioner FHGCCI and respondents FEPI and FEGDI, the conflict of interest of the Board of Directors of petitioner FHGCCI, and their bad faith in carrying out their duties. Likewise alleged is that respondent FEPI and, later, respondent FEGDI are shareholders of petitioner FHGCCI which under the project agreement, respondent FEPI was tasked to perform the development and construction work and other obligations and undertakings of the project as full payment of its subscription to the authorized capital stock of petitioner FHGCCI, which it later assigned to respondent FEGDI. Considering these allegations, we find that, contrary to the claim of petitioner FHGCCI, there are unavoidably intra-corporate controversies intertwined in the specific performance case.

Moreover, a derivative suit is a remedy designed by equity as a principal defense of the minority shareholders against the abuses of the majority.[40] Under the Corporation Code, the corporation's power to sue is lodged with its board of directors or trustees.[41] However, when its officials refuse to sue, or are the ones to be sued, or hold control of the corporation, an individual stockholder may be permitted to institute a derivative suit to enforce a corporate cause of action on behalf of a corporation in order to protect or vindicate its rights.[42] In such

---

[39] *Yu v. Yukayguan, supra* note 2,

[40] *Majority Stockholders of Ruby Industrial Corporation v. Lim,* 665 Phil. 600,632 (2011).

[41] *Hi-Yield Realty, Inc. v. Court of Appeals, supra* note 1.

[42] *Id*.

actions, the corporation is the real party in interest, while the stockholder suing on behalf of the corporation is only a nominal party.[43] Considering its purpose, a derivative suit, therefore, would necessarily touch upon the internal affairs of a corporation. It is for this reason that a derivative suit is among the cases covered by the Interim Rules of Procedure Governing Intra-Corporate Controversies, A.M. No. 01-2-04-SC, March 13, 2001. Section l(a), Rule 1 of the said Interim Rules states that:

RULE 1
General Provisions

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.

In view of the foregoing, we agree with the RTC that the instant derivative suit for specific performance against respondents FEPI and FEGDI falls under the jurisdiction of special commercial courts.

---

[43] *Id*.

In *Gonzales v. GJH Land, Inc.,*[44] we laid down the guidelines to be observed if a commercial case filed before the proper RTC is wrongly raffled to its regular branch. In that case, we said that if the RTC has no internal branch designated as a Special Commercial Court, the proper recourse is to refer the case to the nearest RTC with a designated Special Commercial Court branch within the judicial region. Upon referral, the RTC to which the case was referred to should redocket the case as a commercial case. And if the said RTC has only one branch designated as a Special Commercial Court, it should assign the case to the sole special branch.

The Complaint filed by petitioner FHGCCI failed to comply with the requisites for a valid derivative suit.

In this case, however, to refer the case to a special commercial court would be a waste of time since it is apparent on the face of the Complaint, as pointed out by respondents FEPI and FEGDI in their Answer, that petitioner FHGCCI failed to comply with the requisites for a valid derivative suit.

Rule 8, Section 1 of the Interim Rules of Procedure Governing Intra-Corporate Controversies provides:

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

---

[44] G.R. No. 202664, November 10, 2015.

(4) The suit is not a nuisance or harassment suit.

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

Corollarily, "[f]or a derivative suit to prosper, it is required that the minority stockholder suing for and on behalf of the corporation must allege in his complaint that he is suing on a derivative cause of action on behalf of the corporation and all other stockholders similarly situated who may wish to join him in the suit."[45] It is also required that the stockholder "should have exerted all reasonable efforts 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 [and that such fact is alleged] with particularity in the complaint."[46] The purpose for this rule is "to make the derivative suit the final recourse of the stockholder, after all other remedies to obtain the relief sought had failed."[47] Finally, the stockholder is also required "to allege, explicitly or otherwise, the fact that there were no appraisal rights available for the acts complained of, as well as a categorical statement that the suit is not a nuisance or a harassment suit."[48]

In this case, Madrid, as a shareholder of petitioner FHGCCI, failed to allege with particularity in the Complaint, and even in the Amended Complaint, that he exerted all reasonable efforts to exhaust all remedies available under the articles of incorporation, by-laws, or rules governing the corporation; that no appraisal rights are available for the acts or acts complained of; and that the suit is not a nuisance or a harassment suit. Although the Complaint alleged that demand letters were sent to the Board of Directors of petitioner FHGCCI and that these were unheeded, these allegations will not suffice.

---

[45] *Chua v. Court of Appeals,* 485 Phil. 644, 655 (2004).

[46] *Yu v. Yukayguan, supra* note 2 at 612.

[47] *Id*.

[48] *Id*. at 613.

Thus, for failing to meet the requirements set forth in Section 1, Rule 8 of the Interim Rules of Procedure Governing Intra-Corporate Controversies, the Complaint, denominated as a derivative suit for specific performance, must be dismissed.

WHEREFORE, the Petition is hereby **DENIED.** The assailed Orders dated May 14, 2012 and February 1, 2013 of the Regional Trial Court, Branch 74, Antipolo City, in Civil Case No. 10-9042 are hereby **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson) and *Leonen, JJ.,* concur.

Brion, J., on leave.

Mendoza, J., on official leave.

THIRD DIVISION

[G.R. No. 208527. July 20, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARDO BACERO *y* CASABON,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH HOMICIDE; ALLEGATIONS OF TORTURE SHALL BE DISREGARDED ABSENT PROOF THEREOF, SUCH AS A MEDICAL CERTIFICATE, THAT WOULD SHOW THAT ACCUSED-APPELLANT SUFFERED BODILY HARM WHILE UNDER THE CUSTODY OF POLICE OFFICERS.— Accused-appellant claims that he was coerced into admitting the crime. We hold that his allegation of being subjected to torture does not find support in the evidence on record. There was no proof, such as a medical certificate,