FIRST DIVISION

[G.R. Nos. 263878 and 265518. December 01, 2025]

HERMOGENES FERNANDO, JR., ORGANELLES MOBILE SOLUTIONS, INC., AND ORGANELLES HOLDING AND MANAGEMENT CO., INC.,* PETITIONERS, VS. ROBERTO S. TORRES, RESPONDENT;

FILCONTRADING CORP., RESPONDENT-IN-INTERVENTION.

[G.R. No. 265518]

HERMOGENES FERNANDO, JR., ORGANELLES MOBILE SOLUTIONS, INC., AND ORGANELLES HOLDING AND MANAGEMENT CO., INC., PETITIONERS, VS. ROBERTO S. TORRES, RESPONDENT.

D E C I S I O N

MARQUEZ, J.:

This case started with the refusal to allow a stockholder to inspect corporate books and records. It ended with the creation of a management committee and a court order to pay damages for fraud. A residential house was likewise foreclosed after the court order remained unheeded.

The Court thus affirms with modification the rulings of the Court of Appeals (CA) for petitioners Hermogenes Fernando, Jr. (Fernando), Organelles Mobile Solutions, Inc. (OMSI), and Organelles Holding and Management Co., Inc. (OHMCI) (collectively, Fernando et al.) to pay damages to the aggrieved stockholder.

The first Petition,[1] docketed as G.R. No. 263878 (First Petition), assails the Decision[2] and Resolution[3] of the CA in CA-G.R. SP No. 155500, which affirmed the orders of the Regional Trial Court (RTC) granting the Motion for Execution Pending Appeal of respondent Roberto S. Torres (Torres). The second Petition,[4] docketed as G.R. No. 265518 (Second Petition), assails the Decision[5] and Resolution[6] of the CA in CA-G.R. CV No. 111283, which affirmed with modification the rulings of the RTC granting respondent's complaint against petitioners.

The Court also grants respondent-in-intervention Filcontrading Corp.'s (Filcontrading) Comment in Intervention with Urgent Motion to Lift Temporary Restraining Order (TRO).[7]

Torres owns and operates RRCG Transport System Company, Inc. (RRCG), a public utility bus company operating in Metro Manila.[8] On April 15, 2005, Torres and Fernando incorporated OMSI, which offered automated fare ticketing systems for bus companies. OMSI had an authorized capital of PHP 5 million. Torres subscribed to shares worth PHP 999,980.00, but initially contributed only PHP 950,000.00.[9]

Despite his substantial financial stake in OMSI, Torres became increasingly marginalized in company operations. He was not invited to board meetings or consulted on important corporate decisions. This exclusion extended to financial matters, where he was denied dividends and access to corporate notices. Critical decisions, including securing loans and authorizing expenditures, were made without his input.[10]

In 2006, Torres communicated his concerns about his exclusion from company activities to Fernando. By March 15, 2007, he formally requested to audit OMSI's books, expressing suspicion about mismanagement and inadequate recordkeeping. In response, Fernando offered to buy out Torres from the company, but negotiations failed after they disagreed on the price and terms.[11]

With ongoing disagreements regarding company valuation and management practices, Torres formally stated his intention to inspect OMSI's financial records, hiring Jess Coronel (Coronel), a certified public accountant, to assist in this matter. Initial audit attempts revealed substantial deficiencies in OMSI's internal controls and management, including the lack of independent accounting records. OMSI's transactions were recorded under OHMCI, another company owned by Fernando, further complicating matters concerning transparency.[12]

Coronel's audit prompted Torres to seek information about OMSI's revenue from other bus operators. Investigations revealed that in 2007 alone, OMSI received at least PHP 1.2 million from JAC Liner, and that as of September 30, 2006, OMSI had collectibles of at least PHP 500,000.00 from other bus companies, which Torres had introduced to Fernando. Additionally, Torres paid OMSI around PHP 2.3 million by way of commissions from 2004 to 2006. After discovering that OMSI was materially understating its revenues, Torres formally demanded to inspect OMSI's corporate records and financial records. Fernando refused.[13]

After an unsuccessful attempt to reconcile their differences, Torres filed a complaint with the RTC against Fernando and OMSI for the inspection of corporate books and records.[14] The case was docketed as Civil Case No. 09-009.[15]

Fernando and OMSI contested Torres's request, arguing that it was made in bad faith to harass Fernando and for RRCG to evade payment of its debts to OMSI. They pointed

out that the inspection could jeopardize trade secrets and that Torres was always invited to attend board meetings, but failed to do so.[16]

During the pendency of the proceedings before the RTC, Torres filed a motion to open OMSI's books and for the creation of a management committee to administer OMSI's operations and prevent further loss of corporate assets. On September 1, 2011, the RTC issued an order granting Torres's motion to open the books of OMSI and requiring the parties to nominate members for the Management Committee.[17]

Pursuant to the September 1, 2011 Order, Coronel and Torres's counsel went to OMSI's office on December 15, 2011. However, a staff member of OMSI prohibited Coronel and Torres's counsel from inspecting the books because the matter allegedly required Fernando's prior conformity. They visited OMSI's office on December 19, 2011, but were again denied the opportunity to inspect, the staff member claiming that Fernando had filed a motion before the RTC to defer inspection of OMSI's books.[18] The RTC denied this motion to defer inspection.[19]

On August 16, 2012, the RTC granted Torres's motion for the creation of a management committee, which was authorized to take custody of OMSI's assets, take the place of its management and board of directors, and submit status reports to the RTC.[20] In its Preliminary Report dated November 7, 2012, the Management Committee noted that it had "not received to date any of the documents, schedules[,] and account analyses requested from [Fernando and OMSI[,] which amounts to [nonrecognition] of the [Management Committee's] powers and responsibilities mandated by the [RTC]."[21] Nonetheless, the Management Committee was able to make preliminary findings based on documents it obtained from the Securities Exchange Commission (SEC).

Particularly, the Management Committee found, among others, that:

1. Fernando "has effective overall control in the management and day-to-day operations" of OMSI, OHMCI, and Organelles Technology Solutions, Inc. (OTSI);[22]
2. OMSI had "no operative Board of Directors" and "no effective internal control within the company";[23]
3. "[W]hatever [Fernando] decides to do is implemented even without or lack of corporate authority," and thus "decisions concerning investments, major capital expenditures, incurrence of significant borrowings, and other important business matters are solely made by [Fernando]";[24]
4. OMSI "does not prepare periodic (annual) financial reports" for transparency for its other stockholders, which is "in violation of SEC Memorandum Circular No. 2, [s]eries of 2002—Code of Corporate Governance";[25]
5. OHMCI, the holding company, is "operating outside of its lawful purpose as stated in its Articles of Incorporation" and "competes directly with its own subsidiary company, OMSI, that would amount to undue disadvantage to the

significant minority stockholder (Torres) of the latter company and gives windfall of benefits to OHMCI and [Fernando]."[26]

In its Second Report dated March 20, 2013, the Management Committee noted that OMSI "still refused to present any of the books of accounts and other documents and records needed to evaluate the present state of affairs of OMSI."[27] The Management Committee concluded that OMSI "does not keep its own books of account," thereby violating "Section 74 of the Corporation Code, which requires every corporation to keep and preserve at its principal office the records of all business transactions."[28] The limited information gathered by the Management Committee revealed that OMSI "has only one client and four employees" and that OMSI is "precariously surviving on a hand-to-mouth basis because its income from one client could not meet its administrative and operating expenses."[29]

In the summary of the audited financial statements of OMSI and OHMCI prepared by the Management Committee, it was revealed, among others, that as of December 31, 2011, OMSI had accumulated losses amounting to PHP 26,733,790.00, a capital deficiency amounting to PHP 24,742,960.00, and incurred outstanding liabilities amounting to PHP 29,876,179.00.[30] Moreover, OHMCI's revenues increased by " [PHP 119,699.00] (or by 1%) in 2011 as compared to 2010" while those of OMSI "abruptly decreased by [PHP] 1,796,353.00 (or by 39%) during the same period."[31] In sum, "the revenue level of OHMCI increased while that of OMSI is the exact opposite, although the revenues of OHMCI are supposed to be derived only from dividends or management fees from OMSI."[32]

The Management Committee also found evidence suggesting that OMSI's clients and intellectual assets were being improperly diverted to OHMCI.[33] The Management Committee concluded that a conflict of interest existed because Fernando served as president for both corporations.[34]

Prompted by the findings of the Management Committee, Torres filed a Consolidated Motion for Leave to Admit Amended and Supplemental Complaint and to Re-open Proceedings (Consolidated Motion),[35] where he impleaded OHMCI as an additional defendant, presented additional evidence, and sought to recover PHP 12 million in damages representing the value of his shares.

On March 10, 2014, the RTC issued an Order granting the Consolidated Motion, admitting the Amended and Supplemental Complaint, and directing Fernando et al. to answer it within 15 days from notice. Fernando et al. failed to file an answer despite notice of the RTC's directive, and thus, upon motion of Torres, the RTC issued an Order declaring Fernando et al. in default and allowing Torres to present evidence *ex parte*. [36]

In its Decision[37] dated February 15, 2017, the RTC ruled in favor of Torres and pierced the corporate veils of OMSI and OHMCI since Fernando was controlling both

corporations and using them as conduits to defraud Torres of his investment in OMSI.[38] The RTC held that Fernando blatantly violated Torres's right as a stockholder to inspect corporate books,[39] and since Torres was forced to litigate to protect his interest, he was entitled to attorney's fees.[40] The dispositive portion of the RTC Decision reads:

> **WHEREFORE**, premises considered, judgment is ruled in favor of the plaintiff and against the defendants, thereby ordering the following:
>
> > 1. Ordering the defendants, upon deposit of the estimated cost of the manpower necessary to produce the books and records and the cost of copying thereof, in such amount as this Honorable Court may fix, allow plaintiff or his representatives to inspect the defendants OMSI's and OHMCI's corporate books, records and financial statements pursuant to Sections 74 and 75 of the Corporation Code.
> >
> > 2. That the corporate entities of defendants OMSI and OHMCI shall be pierced, and consider them to be the conduits of defendant Fernando in defrauding the plaintiff of his investment in defendant OMSI.
> >
> > 3. That all the defendants, jointly and severally, to account and pay the plaintiff the fair market value of his investment in defendant OMSI in the amount of [PHP 12 million].
> >
> > 4. That all the defendants, jointly and severally, pay to the plaintiff attorney's fees in the amount of [PHP 100,000.00] and the costs of suit.
>
> Furnish copy of this order to all parties and counsels concerned.
>
> **SO ORDERED**.[41] (Emphasis in the original)

Fernando et al. moved to reconsider the RTC Decision. On June 7, 2017, the RTC denied the motion in its Omnibus Order,[42] where it also granted Torres's Motion for the Issuance of Writ of Execution.[43]

Aggrieved, Fernando et al. appealed the RTC Decision to the CA. Meanwhile, Torres filed a Motion for Execution Pending Appeal,[44] praying for the issuance of a writ of execution to allow him to inspect the corporate books of OMSI and OHMCI, and pay him the fair market value of his investment in OMSI amounting to PHP 12 million.

On December 1, 2017, the RTC granted the Motion for Execution Pending Appeal.[45] Fernando et al. thus filed a Petition for *Certiorari* with the CA.

As a consequence of the granting of the Motion for Execution Pending Appeal, Fernando's property covered by Transfer Certificate of Title (TCT) No. (181410) 083176 was levied by the RTC sheriff.[46] On April 2, 2018, a Notice of Sale on the Execution of Real Property was issued by the RTC sheriff, scheduling a public auction for the subject property to satisfy the RTC Decision.[47] On May 3, 2018, the property was sold to Filcontrading at a public auction.[48]

On August 5, 2019,[49] Filcontrading filed a Petition[50] with the RTC to compel Fernando to surrender his duplicate copy of TCT No. (181410) 083176 or to nullify the same.[51]

On August 31, 2021,[52] the RTC granted Filcontrading's Petition and held that Fernando did not exercise his right of redemption within the one-year redemption period.[53] Despite this, Fernando failed and refused to surrender the owner's duplicate original copy of TCT No. (181410) 083176.[54] The RTC also ruled that, as the purchaser of the auctioned property, Filcontrading was entitled to a writ of possession upon the expiration of the right of redemption.[55] The dispositive portion of the RTC Decision reads:

> **WHEREFORE**, judgment is hereby rendered declaring the withheld owner's duplicate copy of Transfer Certificate of Title No. (181410) 083176 of the Register of Deeds of Muntinlupa City in the name of Hermogenes Fernando, married to Maryann Fernando, as NULL and VOID.
>
> **ACCORDINGLY**, the Register of Deeds of Muntinlupa City is directed to issue a new owner's duplicate copy of Transfer Certificate of Title No. TCT No. (181410) 083176 in the name of [Filcontrading], under the same terms and conditions as the original copy thereof, with the memorandum that it is issued in place of the withheld duplicate certificate, upon payment of all the fees prescribed by law.
>
> **FURTHER**, let the **WRIT OF POSSESSION** be **ISSUED** to place [Filcontrading] in possession of the real property covered by Transfer Certificate of Title No. (181410) 083176 of the Register of Deeds of Muntinlupa City.
>
> **SO ORDERED**.[56] (Emphasis in the original)

Fernando did not appeal this Decision. Thus, the Certificate of Finality was issued, and the Decision[57] was enforced by Filcontrading by registering it with the Register of Deeds of Muntinlupa City and serving the Writ of Possession and Notice to Vacate on Fernando.[58]

On June 1, 2022, Fernando filed a Petition for Relief from Judgment,[59] raising the neglect of his former counsel[60] and praying that the RTC Decision[61] be set aside.[62] On March 17, 2023, the RTC denied the Petition for Relief from Judgment for lack of merit and directed the sheriff to implement the Writ of Possession.[63]

Meanwhile, in separate Decisions, the CA denied Fernando et al.'s Appeal and Petition for *Certiorari* of the assailed RTC rulings in Civil Case No. 09-009.

On February 26, 2021, the Fourth Division of the CA denied the appeal and affirmed the RTC Decision[64] with modification. The dispositive portion of the CA Decision[65] reads:

> **WHEREFORE**, premises considered, the instant Appeal is **DENIED**. The Decision dated February 15, 2017 is **AFFIRMED** with **MODIFICATION**. Judgment is hereby rendered in favor of plaintiff-appellee Roberto S. Torres and against defendants-appellants Hermogenes R. Fernando, Jr., Organelles Mobile Solutions, Inc., and Organelles Holding and Management Co., Inc.
>
> The corporate personalities of defendants-appellants OMSI and OHMCI are herein pierced and treated as conduits of defendant-appellant Hermogenes R. Fernando, Jr. in defrauding plaintiff-appellee Roberto S. Torres of his investment in OMSI.
>
> Defendants-appellants are hereby **ORDERED**, jointly and severally, to pay plaintiff-appellee Roberto S. Torres the amount of [PHP 950,000.00] representing the valuation of his shares in OMSI.
>
> Plaintiff-appellee Roberto S. Torres is **ORDERED** to surrender the certificates of stock representing his 99,998 shares in OMSI.
>
> The RTC Branch Clerk of Court or the latter's duly authorized deputy is **DIRECTED** to make a deficiency assessment for the docket fees regarding the Amended and Supplemental Complaint filed by plaintiff-appellee Roberto S. Torres.
>
> Plaintiff-appellee Roberto S. Torres is **ORDERED** to pay the aforesaid deficiency in the docket fees, which shall constitute a lien on the judgment.
>
> Defendants-appellants are hereby **ORDERED**, jointly and severally, to pay plaintiff-appellee Roberto S. Torres the amount of [PHP 11,050,000.00] as temperate damages.
>
> Defendants-appellants are hereby **ORDERED**, jointly and severally, to pay plaintiff-appellee Roberto S. Torres the amount of [PHP 100,000.00] as attorney's fees as well as the costs of suit.
>
> The formal entry of appearance filed by Atty. Joel E. Paner from the Carambas Paner Law Firm as new counsel for defendants-appellants is

NOTED.

SO ORDERED.[66] (Emphasis in the original)

On the other hand, on September 29, 2021, the First Division of the CA denied the Petition for *Certiorari* of Fernando et al. and affirmed the RTC Orders that allowed the execution pending appeal of the RTC Decision.[67] The dispositive portion of the CA Decision[68] reads:

> **WHEREFORE**, the Petition for *Certiorari* is **DENIED**. The [*Order*] dated [December 1, 2017] and *Order* [dated] [February 20, 2018], respectively, issued by the Regional [T]rial Court, Branch 256, Muntinlupa City (RTC), in Civil Case No. 09-009 are **AFFIRMED**.
>
> The Application for the Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction is **DENIED**.
>
> **SO ORDERED**.[69] (Emphasis in the original)

Fernando et al. filed separate Motions for Reconsideration of the assailed CA Decisions. Notably, Fernando also filed separate Manifestations and Motions, informing the CA of reports that Torres had died and requesting the latter's counsel to confirm Torres's death and comply with the requirements for substitution of a deceased party.[70] In separate Resolutions, the Former First Division (in CA-G.R. SP No. 155500) and the Former Fourth Division (in CA-G.R. CV No. 111283) of the CA denied the Motions.

Hence, these consolidated Petitions.

In the First Petition, petitioners assail the CA Decision affirming the RTC rulings granting respondent's Motions for Issuance of Writ of Execution and for Execution Pending Appeal. They argue that: (1) the CA disregarded the rule on substitution of a deceased party,[71] rendering the proceedings void;[72] (2) the re-opening of the proceedings is prohibited by the Interim Rules of Procedure for Intra-Corporate Controversies (Interim Rules);[73] (3) they were not in default[74] since they were not properly issued summons to answer the Amended and Supplemental Complaint;[75] and (4) respondent failed to pay the docket fees for the Amended and Supplemental Complaint.[76] They also pray for a TRO to prevent the RTC from enforcing the orders allowing execution pending appeal.[77]

In the Second Petition, petitioners assail the RTC judgment by default against them, and in addition to the arguments already raised in the First Petition, maintain that: (1) the death of respondent has extinguished the present action;[78] (2) respondent did not exercise his appraisal rights;[79] and (3) respondent is not entitled to temperate damages.[80]

In a Resolution dated April 26, 2023, this Court granted petitioners' prayer for a TRO against the RTC. The RTC was thus enjoined from enforcing its Orders issued in Civil Case No. 09-009, which allowed execution pending appeal.[81]

Respondent-in-intervention then filed before this Court a Motion for Leave to Intervene and to Admit Comment in Intervention (with Urgent Motion to Lift TRO) in the First Petition, and submitted that: (1) it is a real party-in-interest as the buyer of the auctioned property in the execution sale; (2) petitioners' failure to implead it renders the Petition dismissible;[82] (3) execution pending appeal in intra-corporate cases is allowed;[83] (4) the TRO must be lifted as it violates respondent-in-intervention's due process rights;[84] (5) the TRO must be lifted since petitioner Fernando no longer owns the subject property after failing to exercise his right of redemption;[85] and (6) the acts sought to be restrained have already been executed before the issuance of the TRO.[86] Respondent-in-intervention also manifested that it filed before the RTC a Motion for the Issuance of Break Open Order with the RTC in LRC Case No. 19-040 for it to gain possession of the property it acquired through an auction sale. However, the RTC did not act on this Motion in view of the TRO issued by this Court.[87]

On July 10, 2023, this Court granted the Motion for Leave to Intervene and Admit Comment in Intervention and noted the Comment in Intervention with Urgent Motion to Lift TRO.[88]

On November 13, 2023, the First Petition and the Second Petition were consolidated. [89]

The RTC properly granted the Consolidated Motion, which resulted in the admission of the Amended and Supplemental Complaint and the reopening of the proceedings

Petitioners argue that the Interim Rules prohibits a motion for the re-opening of trial. Since it is a prohibited motion, it cannot be given legal effect.[90] The summary nature of intra-corporate proceedings requires that it be construed to promote a "just, summary, speedy, and inexpensive" settlement of cases.[91]

Petitioners are mistaken. The RTC properly granted the Consolidated Motion. As the CA correctly pointed out, the Rules of Court, which applies suppletorily to the Interim Rules, allows parties to amend or supplement their complaint.[92] Moreover, a trial court has the broad discretion to admit amended pleadings. This broad discretion is constrained only if the proposed amendments substantially alter the cause of action or legal theory, or if they are intended to delay the proceedings. Nevertheless, even a substantial alteration to the cause of action or defense may be permitted when it serves the higher interest of substantial justice, prevents delay, and ensures a just, speedy, and inexpensive disposition of actions and proceedings.[93] Amendments of pleadings are

favored and liberally allowed in furtherance of justice. The discretion of the trial court to grant leave of court to file amended pleadings will not normally be disturbed on appeal, unless this discretion was exercised with evident abuse.[94]

The amendments and supplements filed by respondent are not dilatory and are based on events that transpired since the date of the original Complaint. To recall, while the case was pending before the RTC, respondent's motion for the creation of a management committee to manage and submit reports on the affairs of petitioner OMSI was granted. The Management Committee subsequently unearthed mismanagement, numerous anomalies, unauthorized transactions, and conflicts of interest on the part of petitioner Fernando. The Management Committee also found that petitioner OMSI was not keeping its own books of account and that petitioner OHMCI directly competed with petitioner OMSI, leveraging petitioner OMSI's assets and goodwill. Given these circumstances, a petition solely seeking to compel petitioner OMSI to allow inspection of its corporate books would have been futile. It became imperative for respondent to amend the complaint to introduce additional causes of action.

Notably, the factual findings of the Management Committee were adopted by the RTC and the CA. It is settled that when the CA affirms the factual findings of the RTC, such findings generally become conclusive and binding on this Court.[95]

Respondent cannot be faulted for his non-payment of additional docket fees based on the Amended and Supplemental Complaint

Petitioners point out that respondent's claim for PHP 12 million was only indicated as an estimate in the original Complaint and in the Amended and Supplemental Complaint, thus revealing respondent's "intention to evade the payment of the correct docket fees."[96]

Petitioners are mistaken. The liberal doctrine on docket fees dictates that when insufficient filing fees are paid based on the clerk of court's assessment, such underpayment will not automatically divest the court of jurisdiction, provided there was no intent to defraud the government. The Court clarified that in instances of underpayment, the clerk of court or a duly authorized deputy is responsible for issuing a deficiency assessment. The party filing the action is then obligated to pay the assessed deficiency, which constitutes a lien on any judgment rendered.[97]

Here, the RTC branch clerk of court failed to issue a deficiency assessment, and respondent cannot be faulted for such omission. Petitioners failed to establish any intention on the part of respondent to defraud the government. Consequently, the CA, in CA-G.R. CV No. 111283, already ordered the RTC branch clerk of court to make a deficiency assessment for the docket fees regarding the Amended and Supplemental Complaint and for respondent to pay said deficiency.[98]

Petitioners are estopped from questioning the order of default

Petitioners argue that they should not have been declared in default for failing to answer the Amended and Supplemental Complaint. As the original defendants in this case, they (petitioners Fernando and OMSI) are not required to file a new answer since they already filed an Answer to the original Complaint. Case law has settled that when the defendant has already answered the original complaint, the failure to file a new answer will not put him in default.[99] Petitioner OHMCI, the additional defendant impleaded in the Amended and Supplemental Complaint, on the other hand, is not required to answer the Amended and Supplemental Complaint either, since it was not served with summons and the RTC did not acquire jurisdiction over its person.[100]

Petitioners are mistaken. Petitioner OHMCI, as co-petitioner, cannot rely on its separate juridical personality, considering that, based on the factual circumstances of the case, the RTC and the CA found the doctrine of piercing the veil of corporate fiction to be applicable. It is settled that the determination of whether piercing the veil of corporate fiction is justified is a question of fact which cannot be entertained in a petition for review on *certiorari*. The Court may entertain the factual issues if the findings of the trial court are unsubstantiated. However, when the facts warranting the propriety of piercing the veil of corporate fiction have been affirmed by the CA, such findings of the trial court are deemed final and conclusive.[101]

While the corporate veil cannot typically be pierced to establish jurisdiction over a corporation not impleaded in a complaint, an exception arises when clear and convincing evidence shows that the corporation's separate juridical personality was deliberately used to evade a legitimate obligation or perpetuate fraud or similar misconduct.[102] Here, both the RTC and the CA found that piercing the corporate veil was warranted. This was based on the evidence that petitioner Fernando incorporated petitioner OHMCI merely months after respondent's initial investment in petitioner OMSI, that petitioner OMSI failed to maintain its own books (with transactions instead recorded by petitioner OHMCI), and that petitioner OMSI lacked an operative Board of Directors, effectively granting petitioner Fernando total control over both entities. Consequently, petitioners Fernando, OMSI, and OHMCI shall be deemed a single entity for purposes of liability.

As to petitioners Fernando and OMSI, they are estopped from questioning the order of default. They failed to oppose respondent's motion to declare them in default, nor did they file any pleading when the motion was submitted for resolution.[103] Crucially, as the CA observed, petitioners did not move to set aside the default order,[104] the specific remedy provided under Rule 9, Section 3(b) of the Rules of Court. This omission deprived the RTC of the opportunity to review the merits of their objections. Given that this case had already languished for over eight years before the RTC due to "countless legal skirmishes" and "entanglement of technical niceties,"[105] petitioners can no longer be allowed to challenge the default order at this belated stage and further delay the proceedings.

The instant action survives the death of respondent

Petitioners claim that the death of respondent extinguished the present action since it involves a stockholder's "personal" right to inspect corporate books.

Petitioners are mistaken. The test to determine whether an action survives the death of a party is whether it "affects primarily and principally property and property rights." [106] Actions primarily involving property rights survive a party's death even if there are incidental injuries to the person, while those involving injuries to a person are extinguished upon a party's death even if there are incidental property rights affected. [107]

The inspection of corporate books is a property right of a stockholder. In *Gokongwei, Jr. v. Securities and Exchange Commission*,[108] the Court has settled:

> *The stockholder's right of inspection of the corporation's books and records is based upon their ownership of the assets and property of the corporation*. It is, therefore, *an incident of ownership of the corporate property*, whether this ownership or interest be termed an equitable ownership, a beneficial ownership, or a quasi-ownership.[109] (Emphasis supplied)

Here, respondent's action, based on his rights as a stockholder, comprising not only of inspecting corporate books but also of the right to recover damages arising from petitioners' violation thereof, principally involves property rights which, by their nature, survive his death.

The failure of respondent's counsel to notify the CA of respondent's death did not render the proceedings void

While the cases were respectively pending with the First Division and Fourth Division of the CA, petitioners informed the appellate court of respondent's death through separate manifestations and motions.[110] However, the CA allegedly disregarded the rule on substitution of a deceased party, which petitioners argue rendered the proceedings infirm.[111]

Petitioners are mistaken. In a line of cases, the Court has consistently held that proceedings are not invalidated by the counsel's failure to inform the court of his client's death and the lack of party substitution, provided the action survives the party's death. In such instances, the resulting decision binds the party's successors-in-interest. [112]

The duty of the court to order the substitution of the deceased party arises only upon the proper notice by his counsel. Rule 3, Section 16 of the Rules of Court states:

> Section 16. *Death of party; duty of counsel*. - Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within [30 days] after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.
>
> The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.
>
> *The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of* [30 days] *from notice.*
>
> If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. (Emphasis supplied)

Based on the above provision, a court's order of substitution is predicated upon the proper notification of a party's death by their counsel. Absent such notice, the CA could not be expected to act upon respondent's reported death based solely on the assertions of petitioners without a formal manifestation from respondent's own counsel.

Nonetheless, respondent is the adjudged creditor in this case. The non-substitution of his heirs at this stage would bear little consequence. Thus, petitioners' reliance on *Regalado v. Regalado*,[113] which states that "no adjudication can be made against the successor of the deceased if the fundamental right to a day in court is denied,"[114] is misplaced since the judgment in the present case actually favors the heirs of respondent.

There is no basis for finding that respondent exercised his appraisal right

Petitioners contend that the CA erred in concluding that respondent exercised his appraisal right, asserting the lack of evidence establishing compliance with the old Corporation Code's requirements for such exercise.[115] None of the grounds for the exercise of the appraisal right were cited nor established in this case,[116] and the procedure for the exercise of the appraisal right under the old Corporation Code was not followed.[117] Finally, respondent failed to establish that petitioner OMSI had any unrestricted retained earnings, a requirement for the exercise of the appraisal right.[118]

Petitioners are not mistaken. The CA erred in finding that respondent had exercised his appraisal right.

Appraisal right is the right of a stockholder of a corporation "to dissent and demand payment of the fair value of his shares" when the grounds for it are present as provided by law.[119] The appraisal right may be exercised in any of the following instances: (1) the investment of corporate funds in another corporation, business, or purpose;[120] (2) an amendment to the articles of incorporation that changes or restricts stockholder rights, authorizes superior share preferences, or extends or shortens the corporate term; (3) the substantial disposition of corporate assets; and (4) a merger or consolidation.[121]

None of these grounds are present in this case. While petitioner Fernando's actions were considered fraudulent, as correctly characterized by the CA, they do not fall under any of the grounds for the exercise of the appraisal right as provided by the old Corporation Code. Stockholders affected by mismanagement, fraud, or unauthorized acts have other available legal remedies, but the appraisal right is not one of them unless the statutory grounds are met.

Moreover, respondent failed to prove compliance with the procedure under Section 82 of the old Corporation Code[122] and the existence of unrestricted retained earnings[123] in petitioner OMSI, both of which are required for stockholders exercising the appraisal right to be paid the value of their shares.

As such, the CA erred in awarding PHP 950,000.00 to respondent based on his alleged exercise of his appraisal right. This award, supposedly representing the value of respondent's shares in OMSI, must be deleted.

Respondent is entitled to temperate damages

Respondent is entitled to temperate damages in the amount of PHP 11,050,000.00.

Temperate damages may be recovered when the court finds that some pecuniary loss has been suffered, but its amount cannot, from the nature of the case, be provided with certainty.[124] It is settled that the assessment of temperate damages is left to the sound discretion of the court, as long as it is reasonable under the circumstances, more than nominal, but less than compensatory.[125]

In this case, the CA's assessment of temperate damages was primarily based on the reports of the Management Committee concerning fraud, mismanagement, and anomalies committed by petitioners. Based on the 2010-2011 financial records, petitioner OHMCI's revenue increased while petitioner OMSI's revenue decreased, although the revenues of petitioner OHMCI were supposed to be derived only from dividends or management fees from petitioner OMSI. Furthermore, in 2011, petitioner OHMCI's total assets of PHP 23,147,733.00 significantly dwarfed petitioner OMSI's PHP 5,133,219.00, creating an asset disparity exceeding PHP 18 million. Although these figures do not exactly represent the true pecuniary losses or unrealized earnings

suffered by respondent as a result of the fraudulent acts of petitioners, they provide a reasonable basis for the CA to approximate said losses at PHP 11,050,000.00.[126]

Since petitioners failed to demonstrate that this assessment of the CA was unreasonable, this Court affirms the award for temperate damages. However, in line with recent jurisprudence,[127] the total monetary award granted to respondent shall earn legal interest at the rate of 6% per annum from the date of finality of this Decision until fully paid.

Respondent-in-intervention's prayer to lift the TRO is meritorious

After a careful review of respondent-in-intervention's Comment, the Court finds merit in granting the prayer to lift the TRO.

Petitioners claim that allowing the cancellation of petitioner Fernando's TCT and the respondent-in-intervention to possess the property covered by it would "work grave and irreparable injustice to petitioner Fernando and have the irreversible effect of costing the latter the loss of his property and everything he has already spent in litigation."[128]

Petitioners are mistaken. The assailed CA ruling in the First Petition, which affirmed the RTC's grant of respondent's Motion for Execution Pending Appeal, led to the levy of petitioner Fernando's property covered by TCT No. (181410) 083176.[129] Respondent-in-intervention was the winning bidder at the auction sale of this property. Petitioners even admitted that the RTC's sheriff sold this property to respondent-in-intervention on May 3, 2018,[130] that respondent-in-intervention filed a petition to cancel or cause the surrender of petitioner Fernando's duplicate TCT over the same land,[131] that the trial court rendered a decision in favor of respondent-in-intervention, [132] and that Fernando did not redeem the subject property.[133]

Despite these facts, petitioners did not implead respondent-in-intervention in the First Petition, which sought: (1) the nullification of the RTC orders granting respondent's Motions for Execution and Execution Pending Appeal; and (2) the issuance of a TRO against the execution pending appeal of the RTC's judgment. The execution of the judgment was ultimately being sought to be enforced against respondent-in-intervention, which happened to be the winning bidder of the subject property levied upon and auctioned.

While it is true that a TRO may be issued *ex parte*, this only applies in exceptional circumstances where: (1) great or irreparable injury would result before the matter can be heard on notice; or (2) if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury.[134] None of the grounds warranting an *ex parte* TRO are present here.

In *Power Sector Assets and Liabilities Management Corp v. Court of Appeals*,[135] this Court held that a non-party to a suit may not be subjected to an injunctive writ issued

against one of the parties:

> In fine, the CA unquestionably exceeded its jurisdiction in including PSALM within the coverage of the TRO and the writ of injunction issued against NPC. There is no question that as a provisional remedy to prevent irreparable injury pending the final determination of the action, *injunction can bind only the parties in the action, or their privies or successors-in-interest. No person who has not been impleaded and duly served with the summons should be adversely affected by the outcome of the action*. The principle that a person cannot be prejudiced by a ruling rendered in an action or proceeding in which it has not been made a party conforms to the constitutional guarantee of due process of law. *Certiorari* lies.[136] (Emphasis supplied)

In *Muñoz v. Atty. Yabut, Jr.*,[137] this Court held that a judgment cannot be executed against non-parties:

> *Since they were not impleaded as parties and given the opportunity to participate in Civil Case No. Q-28580, the final judgment in said case cannot bind BPI Family and the spouses Chan*. The effect of the said judgment cannot be extended to BPI Family and the spouses Chan by simply issuing an *alias* writ of execution against them. No man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by any judgment rendered by the court. *In the same manner, a writ of execution can be issued only against a party and not against one who did not have his day in court*. Only real parties in interest in an action are bound by the judgment therein and by writs of execution issued pursuant thereto.[138] (Emphasis supplied)

Respondent-in-intervention is not a party to the present case. Nevertheless, its status as the winning bidder of the subject property, coupled with petitioner Fernando's failure to redeem it, renders it an indispensable party. An indispensable party is a party without whom no final determination can be made without injuring or affecting their interest.[139] Since the TRO directly affects the respondent-in-intervention's ownership rights and possession over the property, it was erroneous for petitioners to exclude it from the suit.

Petitioners cannot claim irreparable injury or grave injustice because the auction sale has been consummated. Respondent-in-intervention has fully paid the bid price, and petitioner Fernando allowed his redemption period to lapse. The complete transfer of rights to respondent-in-intervention leaves no justification for the restraining order.

While petitioners also claim that the levied property is exempt from execution as a family home,[140] no proof was offered to establish this fact. Hence, this argument deserves no consideration.

ACCORDINGLY, the Court resolves as follows:

(1) The Petition for Review on *Certiorari* in G.R. No. 263878 is **DENIED**. The September 29, 2021 Decision and October 11, 2022 Resolution of the Court of Appeals in CA-G.R. SP No. 155500 are **AFFIRMED**;

(2) The Petition for Review on *Certiorari* in G.R. No. 265518 is **DENIED**. The February 26, 2021 Decision and January 11, 2023 Resolution of the Court of Appeals in CA-G.R. CV No. 111283 are **AFFIRMED with MODIFICATION** in that:

(a) the order for petitioners Hermogenes R. Fernando, Jr., Organelles Mobile Solutions, Inc. and Organelles Holding and Management Co., Inc. to jointly and severally pay respondent Roberto S. Torres the amount of PHP 950,000.00 representing the valuation of his shares in Organelles Mobile Solutions, Inc. is **DELETED**; and

(b) the total monetary award in favor of respondent Roberto S. Torres shall earn legal interest at the rate of 6% per annum from the date of finality of this Decision until fully paid; and

(3) The Comment-in-Intervention with Urgent Motion to Lift Temporary Restraining Order filed by respondent-in-intervention Filcontrading Corp. is **GRANTED**. The Temporary Restraining Order dated April 26, 2023 is ordered **LIFTED**.

SO ORDERED.

Gesmundo, C.J. (Chairperson), Hernando, Zalameda, and *J. Lopez,*[**] *JJ.*, concur.

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[*] Also referred to as "Organelles Holding and Management, Inc. (OHMI)" in some parts of the *rollos*.

[**] Designated additional member per Raffle dated June 10, 2024.

[1] *Rollo* (**G.R. No. 263878**), pp. 51-105. Petition for Review on *Certiorari* dated December 5, 2022.

[2] *Id.* at 107-128. The September 29, 2021 Decision in CA-G.R. SP No. 155500 was penned by Associate Justice Alfredo D. Ampuan and concurred in by Presiding Justice Remedios A. Salazar-Fernando and Associate Justice Pedro B. Corales of the First Division, Court of Appeals, Manila.

[3] *Id.* at 145-148. The October 11, 2022 Resolution in CA-G.R. SP No. 155500 was penned by Associate Justice Alfredo D. Ampuan and concurred in by Presiding Justice

Remedios A. Salazar-Fernando and Associate Justice Pedro B. Corales of the Former First Division, Court of Appeals, Manila.

[4] *Rollo* (**G.R. No. 265518**), pp. 54-129. Petition for Review on *Certiorari* dated March 24, 2023.

[5] *Id.* at 130-164. The February 26, 2021 Decision in CA-G.R. CV No. 111283 was penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Alfredo D. Ampuan of the Fourth Division, Court of Appeals, Manila.

[6] *Id.* at 165-172. The January 11, 2023 Resolution in CA-G.R. CV No. 111283 was penned by Associate Justice Maria Elisa Sempio Diy and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Alfredo D. Ampuan of the Former Fourth Division, Court of Appeals, Manila.

[7] *Rollo* (**G.R. No. 263878**), pp. 949-967.

[8] *Rollo* (**G.R. No. 265518**), p. 131.

[9] *Id.* at 131-132.

[10] *Id.* at 132.

[11] *Id.* at 132-133.

[12] *Id.* at 133-134.

[13] *Id.* at 134-135.

[14] *Id.* at 135.

[15] *Id.* at 173.

[16] *Id.* at 135.

[17] *Id.* at 136.

[18] *Id.* at 136-137.

[19] *Id.* at 137.

[20] *Id.* at 137-138.

[21] *Id.* at 138.

[22] *Id.* at 139.

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.* at 139-140.

[27] *Id.* at 140.

[28] *Id.*

[29] *Id.* at 140-141.

[30] *Id.* at 141.

[31] *Id.*

[32] *Id.*

[33] *Id.* at 142.

[34] *Id.*

[35] *Id.* at 143.

[36] *Id.* at 143-144.

[37] *Id.* at 252-258. The February 15, 2017 Decision in Civil Case No. 09-009 was penned by Presiding Judge Leandro C. Catalo of Branch 256, Regional Trial Court, City of Muntinlupa.

[38] *Id.* at 255.

[39] *Id.* at 256.

[40] *Id.* at 257.

[41] *Id.* at 257-258.

[42] *Id.* at 259-263.

[43] *Id.* at 263.

[44] *Id.* at 264-266. Motion for Execution Pending Appeal dated July 7, 2017.

[45] *Id.* at 267-268. The December 1, 2017 Order in Civil Case No. 09-009 was penned by Presiding Judge Leandro C. Catalo of Branch 256, Regional Trial Court, City of Muntinlupa.

[46] *Id.* at 66.

[47] *Id.*

[48] *Id.*

[49] *Rollo* (**G.R. No. 263878**), p. 292.

[50] *Id.* at 272-283.

[51] The case was docketed as LRC Case No. 19-040.

[52] *Rollo* (**G.R. No. 263878**), pp. 292-306. The August 31, 2021 Decision in LRC Case No. 19-040 was penned by then Presiding Judge Gener M. Gito (now Associate Justice of the Sandiganbayan) of Branch 206, Regional Trial Court, Muntinlupa City.

[53] *Id.* at 301.

[54] *Id.*

[55] *Id.* at 305.

[56] *Id.* at 305-306.

[57] The August 31, 2021 Decision in LRC Case No. 19-040.

[58] *Rollo* (**G.R. No. 263878**), p. 951.

[59] *Id.* at 307-331.

[60] *Id.* at 313.

[61] The August 31, 2021 Decision in LRC Case No. 19-040.

[62] *Rollo* (**G.R. No. 263878**), p. 325.

[63] *Id.* at 976-992. The March 17, 2023 Omnibus Order in LRC Case No. 19-040 was penned by then Presiding Judge Gener M. Gito (now Associate Justice of the Sandiganbayan) of Branch 206, Regional Trial Court, Muntinlupa City.

[64] The February 15, 2017 Decision in Civil Case No. 09-009.

[65] *Rollo* (**G.R. No. 265518**), pp. 130-164. The February 26, 2021 Decision in CA-G.R. CV No. 111283.

[66] *Id.*

[67] *Rollo* (**G.R. No. 263878**), p. 120.

[68] *Id.* at 107-128. The September 29, 2021 Decision in CA-G.R. SP No. 155500.

[69] *Id.* at 127.

[70] *Rollo* (**G.R. No. 263878**), p. 53; *rollo* (**G.R. No. 265518**), p. 57.

[71] *Rollo* (**G.R. No. 263878**), p. 64.

[72] *Id.* at 66.

[73] *Id.* at 70-71.

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

[75] *Id.* at 79.

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

[77] *Id.* at 91.

[78] *Rollo* (**G.R. No. 265518**), p. 86.

[79] *Id.* at 95.

[80] *Id.* at 106-107.

[81] *Rollo* (**G.R. No. 263878**), pp. 876-877.

[82] *Id.* at 953.

[83] *Id.* at 956.

[84] *Id.* at 960.

[85] *Id.* at 961.

[86] *Id.* at 965.

[87] *Id.* at 951.

[88] *Id.* at 1079-A.

[89] *Id.* at 1173.

[90] *Rollo* (**G.R. No. 265518**), pp. 78-79.

[91] *Id.* at 79.

[92] RULES OF COURT, Rule 10, secs. 2-3, 6.

[93] **Lisam Enterprises, Inc. v. Banco de Oro Unibank, Inc.**, 686 Phil. 293, 304 (2012) [Per J. Peralta, Third Division].

[94] **Quirao v. Quirao**, 460 Phil. 605, 611 (2003) [Per J. Puno, Third Division].

[95] **Republic v. Casimiro**, 524 Phil. 796, 820 (2006) [Per J. Chico-Nazario, First Division].

[96] *Rollo* (**G.R. No. 265518**), p. 82.

[97] **Ramones v. Spouses Guimoc**, 838 Phil. 542, 551-552 (2018) [Per J. Perlas-Bernabe, Second Division].

[98] *Rollo* (**G.R. No. 265518**), p. 163.

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

[100] *Id.* at 70.

[101] **I/AME v. Litton and Company, Inc.**, 822 Phil. 610, 617-618 (2017) [Per C.J. Sereno, First Division].

[102] *Id.* at 619.

[103] *Rollo* (**G.R. No. 265518**), p. 261.

[104] *Rollo* (**G.R. No. 263878**), p. 123.

[105] *Rollo* (**G.R. No. 265518**), p. 261.

[106] **Pacific Rehouse Corporation v. Ngo**, 784 Phil. 488, 498 (2016) [Per J. Perlas-Bernabe, First Division].

[107] *Id.*

[108] **Gokongwei, Jr. v. Securities and Exchange Commission**, 178 Phil. 266 (1979) [Per J. Antonio, *En Banc*].

[109] *Id.* at 314.

[110] *Rollo* (**G.R. No. 265518**), p. 57; *rollo* (**G.R. No. 263878**), p. 53.

[111] *Rollo* (**G.R. No. 265518**), p. 89.

[112] **Saligumba v. Palanog**, 593 Phil. 420, 431 (2008) [Per J. Carpio, First Division]; **Heirs of Regoso v. Court of Appeals**, 286 Phil. 454, 459 (1992) [Per J. Griño-Aquino, First Division]; **Florendo v. Coloma**, 214 Phil. 268, 274 (1984) [Per J. Gutierrez, Jr., First Division].

[113] 655 Phil. 837, 843 (2011) [Per J. Nachura, Second Division].

[114] *Rollo* (**G.R. No. 265518**), p. 94.

[115] *Id.* at 95.

[116] *Id.* at 100.

[117] *Id.* at 102.

[118] *Id.*

[119] CORP. CODE (1980), sec. 80.

[120] CORP. CODE (1980), sec. 42.

[121] CORP. CODE (1980), sec. 81.

[122] CORP. CODE (1980), sec. 82 states:

> SECTION 82. *How Right is Exercised*. — The appraisal right may be exercised by any stockholder who shall have voted against the proposed corporate action, by making a written demand on the corporation within [30 days] after the date on which the vote was taken for payment of the fair value of his shares: Provided, That failure to make the demand within such period shall be deemed a waiver of the appraisal right. If the proposed corporate action is implemented or affected, the corporation shall pay to such stockholder, upon surrender of the certificate(s) of stock representing his shares, the fair value thereof as of the day prior to the date on which the vote was taken, excluding any appreciation or depreciation in anticipation of such corporate action.
>
> If within a period of [60 days] from the date the corporate action was approved by the stockholders, the withdrawing stockholder and the corporation cannot agree on the fair value of the shares, it shall be determined and appraised by three [ ] disinterested persons, one of whom shall be named by the stockholder, another by the corporation and the third by the two thus chosen. The findings of the majority of the appraisers shall be final, and their award shall be paid by the corporation within [30 days] after such award is made: Provided, That no payment shall be made to any dissenting stockholder unless the corporation has unrestricted retained earnings in its books to cover such payment: and Provided, further, That upon payment by the corporation of the agreed or awarded price, the stockholder shall forthwith transfer his shares to the corporation.

[123] *See* **Turner v. Lorenzo Shipping Corp.**, 650 Phil. 372, 387-388 (2010) [Per J. Bersamin, Third Division].

[124] CIVIL CODE, art. 2224.

[125] **Aleta v. Sofitel Philippine Plaza Manila**, 933 Phil. 97, 116-117 (2023) [Per J. Leonen, Second Division], *citing* **Spouses Hernandez v. Spouses Dolor**, 479 Phil. 593, 604 (2004) [Per J. Ynares-Santiago, First Division].

[126] *Rollo* (**G.R. No. 265518**), p. 161.

[127] **Lara's Gifts & Decors v. Midtown Industrial Sales, Inc.**, 929 Phil. 754, 767 (2022) [Per J. Leonen, *En Banc*].

[128] *Rollo* (**G.R. No. 263878**), p. 90.

[129] *Id.* at 116.

[130] *Id.* at 60.

[131] *Id.* at 89.

[132] *Id.*

[133] *Id.* at 1140.

[134] RULES OF COURT, Rule 58, sec. 5, pars. 1-2.

[135] 805 Phil. 786 (2017) [Per J. Bersamin, Third Division].

[136] *Id.* at 798.

[137] 665 Phil. 488 (2011) [Per J. Leonardo-De Castro, First Division].

[138] *Id.* at 510.

[139] **Spouses Garcia v. Garcia**, 676 Phil. 1, 12-13 (2011) [Per J. Peralta, Third Division].

[140] *Id.* at 52, 60.

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