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SECOND DIVISION

[G.R. No. 168863. June 23, 2009]

HI-YIELD REALTY, INCORPORATED, *petitioner, vs.* **HON. COURT OF APPEALS, HON. CESAR O. UNTALAN, in his capacity as PRESIDING JUDGE OF RTC-MAKATI, BRANCH 142, HONORIO TORRES & SONS, INC., and ROBERTO H. TORRES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHEN PROPER; PETITION FOR *CERTIORARI* DISTINGUISHED FROM PETITION FOR REVIEW ON *CERTIORARI*. — A petition for *certiorari* is proper if a tribunal, board or officer exercising judicial or quasi-judicial functions 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. Petitioner sought a review of the trial court's Orders dated January 22, 2004 and April 27, 2004 via a petition for *certiorari* before the Court of Appeals. In rendering the assailed decision and resolution, the Court of Appeals was acting under its concurrent jurisdiction to entertain petitions for *certiorari* under paragraph 2, Section 4 of Rule 65 of the Rules of Court. Thus, if erroneous, the decision and resolution of the appellate court should properly be assailed by means of a petition for review on *certiorari* under Rule 45 of the Rules of Court. The distinction is clear: a petition for *certiorari* seeks to correct errors of jurisdiction while a petition for review on *certiorari* seeks to correct errors of judgment committed by the court *a quo*. Indeed, this Court has often reminded members of the bench and bar that a special civil action for *certiorari* under Rule 65 lies only when there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law. In the case at hand, petitioner impetuously filed a petition for *certiorari* before us when a petition for review was available as a speedy and adequate remedy. Notably, petitioner filed the present petition 58 days after it received

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a copy of the assailed resolution dated May 26, 2005. To our mind, this belated action evidences petitioner's effort to substitute for a lost appeal this petition for *certiorari.*

2. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; WHEN PRESENT. — For the extraordinary remedy of *certiorari* to lie by reason of grave abuse of discretion, the abuse of discretion must be so patent and gross as to amount to an evasion of positive duty, or a virtual refusal to perform the duty enjoined or to act in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion and personal hostility. We find no grave abuse of discretion on the part of the appellate court in this case.

3. COMMERCIAL LAW; CORPORATION LAW; CORPORATION; DERIVATIVE SUIT; EXPLAINED. — Simply, the resolution of the issues posed by petitioner rests on a determination of the nature of the petition filed by respondents in the RTC. Both the RTC and Court of Appeals ruled that the action is in the form of a derivative suit although captioned as a petition for annulment of real estate mortgage and foreclosure sale. A derivative action is a suit by a shareholder to enforce a corporate cause of action. Under the Corporation Code, where a corporation is an injured party, its power to sue is lodged with its board of directors or trustees. But an individual stockholder may be permitted to institute a derivative suit on behalf of the corporation in order to protect or vindicate corporate rights whenever the officials of the corporation refuse to sue, or are the ones to be sued, or hold control of the corporation. In such actions, the corporation is the real party-in-interest while the suing stockholder, on behalf of the corporation, is only a nominal party.

4. ID.; ID.; ID.; ID.; REQUISITES. — In the case of *Filipinas Port Services, Inc. v. Go,* we enumerated the foregoing requisites before a stockholder can file a derivative suit: a) the party bringing suit should be a shareholder as of the time of the act or transaction complained of, the number of his shares not being material; b) he has tried to exhaust intra-corporate remedies, *i.e.*, has made a demand on the board of directors for the appropriate relief but the latter has failed or refused to heed his plea; and c) the cause of action actually devolves on the corporation, the wrongdoing or harm having been, or

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

5. ID.; ID.; ID.; ID.; REQUIREMENTS TO PROSPER. — Even then, not every suit filed on behalf of the corporation is a derivative suit. For a derivative suit to prosper, 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. The Court finds that Roberto had satisfied this requirement in paragraph five (5) of his petition xxx.

6. ID.; ID.; ID.; ID.; NO LONGER NECESSARY WHERE THE CORPORATION ITSELF IS UNDER THE COMPLETE CONTROL OF THE PERSON AGAINST WHOM THE SUIT IS BEING FILED; CASE AT BAR. — Further, while it is true that the complaining stockholder must satisfactorily show that he has exhausted all means to redress his grievances within the corporation; such remedy is no longer necessary where the corporation itself is under the complete control of the person against whom the suit is being filed. The reason is obvious: a demand upon the board to institute an action and prosecute the same effectively would have been useless and an exercise in futility. Here, Roberto alleged in his petition that earnest efforts were made to reach a compromise among family members/stockholders before he filed the case. He also maintained that Leonora Torres held 55% of the outstanding shares while Ma. Theresa, Glenn and Stephanie excluded him from the affairs of the corporation. Even more glaring was the fact that from June 10, 1992, when the first mortgage deed was executed until July 23, 2002, when the properties mortgaged were foreclosed, the Board of Directors of HTSI did nothing to rectify the alleged unauthorized transactions of Leonora. Clearly, Roberto could not expect relief from the board.

7. ID.; ID.; ID.; ID.; VENUE THEREOF. — Derivative suits are governed by a special set of rules under A.M. No. 01-2-04-SC otherwise known as the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799. Section 1, Rule 1 thereof expressly lists derivative suits among the cases covered by it. As regards the venue of derivative suits, Section 5, Rule 1 of A.M. No. 01-2-04-SC

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states: ***SEC. 5***. *Venue*. - All actions covered by these Rules shall be commenced and tried in the Regional Trial Court which has jurisdiction over the principal office of the corporation, partnership, or association concerned. Where the principal office of the corporation, partnership or association is registered in the Securities and Exchange Commission as Metro Manila, the action must be filed in the city or municipality where the head office is located. Thus, the Court of Appeals did not commit grave abuse of discretion when it found that respondents correctly filed the derivative suit before the Makati RTC where HTSI had its principal office.

8. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* MERE ERRORS OF JUDGMENT ARE NOT PROPER SUBJECTS THEREOF. — There being no showing of any grave abuse of discretion on the part of the Court of Appeals the other alleged errors will no longer be passed upon as mere errors of judgment are not proper subjects of a petition for *certiorari*.

APPEARANCES OF COUNSEL

Bacay Ligan Law Office for petitioner.
G.P. Angeles & Associates Law Office for private respondents.

D E C I S I O N

QUISUMBING, *J.*:

This is a special civil action for *certiorari* seeking to nullify and set aside the Decision[1] dated March 10, 2005 and Resolution[2] dated May 26, 2005 of the Court of Appeals in CA-G.R. SP. No. 83919. The appellate court had dismissed the petition for *certiorari* and prohibition filed by petitioner and denied its reconsideration.

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[1] *Rollo*, pp. 20-31. Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Lucas P. Bersamin (now a member of this Court) and Celia C. Librea-Leagogo concurring.

[2] *Id.* at 33.

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The antecedent facts of the case are undisputed.

On July 31, 2003, Roberto H. Torres (Roberto), for and on behalf of Honorio Torres & Sons, Inc. (HTSI), filed a Petition for Annulment of Real Estate Mortgage and Foreclosure Sale[3] over two parcels of land located in Marikina and Quezon City. The suit was filed against Leonora, Ma. Theresa, Glenn and Stephanie, all surnamed Torres, the Register of Deeds of Marikina and Quezon City, and petitioner Hi-Yield Realty, Inc. (Hi-Yield). It was docketed as Civil Case No. 03-892 with Branch 148 of the Regional Trial Court (RTC) of Makati City.

On September 15, 2003, petitioner moved to dismiss the petition on grounds of improper venue and payment of insufficient docket fees. The RTC denied said motion in an Order[4] dated January 22, 2004. The trial court held that the case was, in nature, a real action in the form of a derivative suit cognizable by a special commercial court pursuant to Administrative Matter No. 00-11-03-SC.[5] Petitioner sought reconsideration, but its motion was denied in an Order[6] dated April 27, 2004.

Thereafter, petitioner filed a petition for *certiorari* and prohibition before the Court of Appeals. In a Decision dated March 10, 2005, the appellate court agreed with the RTC that the case was a derivative suit. It further ruled that the prayer for annulment of mortgage and foreclosure proceedings was merely incidental to the main action. The dispositive portion of said decision reads:

WHEREFORE, premises considered, this Petition is hereby **DISMISSED.** However, public respondent is hereby **DIRECTED** to instruct his Clerk of Court to compute the proper docket fees

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[3] Records, pp. 1-6.

[4] *Id.* at 47-51.

[5] RESOLUTION DESIGNATING CERTAIN BRANCHES OF REGIONAL TRIAL COURTS TO TRY AND DECIDE CASES FORMERLY COGNIZABLE BY THE SECURITIES AND EXCHANGE COMMISSION, took effect on December 15, 2000.

[6] Records, p. 77.

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and thereafter, to order the private respondent to pay the same **IMMEDIATELY**.

SO ORDERED.[7]

Petitioner's motion for reconsideration[8] was denied in a Resolution dated May 26, 2005.

Hence, this petition which raises the following issues:

I.

WHETHER THE HONORABLE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN NOT DISMISSING THE CASE AGAINST HI-YIELD FOR IMPROPER VENUE DESPITE FINDINGS BY THE TRIAL COURT THAT THE ACTION IS A REAL ACTION.

II.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN NOT DISMISSING THE COMPLAINT AS AGAINST HI-YIELD EVEN IF THE JOINDER OF PARTIES IN THE COMPLAINT VIOLATED THE RULES ON VENUE.

III.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE ANNULMENT OF REAL ESTATE MORTGAGE AND FORECLOSURE SALE IN THE COMPLAINT IS MERELY INCIDENTAL [TO] THE DERIVATIVE SUIT.[9]

The pivotal issues for resolution are as follows: (1) whether venue was properly laid; (2) whether there was proper joinder of parties; and (3) whether the action to annul the real estate mortgage and foreclosure sale is a mere incident of the derivative suit.

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[7] *Rollo*, p. 31.

[8] *Id.* at 92-102.

[9] *Id.* at 141-142.

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Petitioner imputes grave abuse of discretion on the Court of Appeals for not dismissing the case against it even as the trial court found the same to be a real action. It explains that the rule on venue under the Rules of Court prevails over the rule prescribing the venue for intra-corporate controversies; hence, HTSI erred when it filed its suit only in Makati when the lands subjects of the case are in Marikina and Quezon City. Further, petitioner argues that the appellate court erred in ruling that the action is mainly a derivative suit and the annulment of real estate mortgage and foreclosure sale is merely incidental thereto. It points out that the caption of the case, substance of the allegations, and relief prayed for revealed that the main thrust of the action is to recover the lands. Lastly, petitioner asserts that it should be dropped as a party to the case for it has been wrongly impleaded as a non-stockholder defendant in the intra-corporate dispute.

On the other hand, respondents maintain that the action is primarily a derivative suit to redress the alleged unauthorized acts of its corporate officers and major stockholders in connection with the lands. They postulate that the nullification of the mortgage and foreclosure sale would just be a logical consequence of a decision adverse to said officers and stockholders.

After careful consideration, we are in agreement that the petition must be dismissed.

A petition for *certiorari* is proper if a tribunal, board or officer exercising judicial or quasi-judicial functions 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.[10]

Petitioner sought a review of the trial court's Orders dated January 22, 2004 and April 27, 2004 via a petition for *certiorari* before the Court of Appeals. In rendering the assailed decision

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[10] *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, G.R No. 132703, June 23, 2000, 334 SCRA 305, 315.

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and resolution, the Court of Appeals was acting under its concurrent jurisdiction to entertain petitions for *certiorari* under paragraph 2,[11] Section 4 of Rule 65 of the Rules of Court. Thus, if erroneous, the decision and resolution of the appellate court should properly be assailed by means of a petition for review on *certiorari* under Rule 45 of the Rules of Court. The distinction is clear: a petition for *certiorari* seeks to correct errors of jurisdiction while a petition for review on *certiorari* seeks to correct errors of judgment committed by the court *a quo*.[12] Indeed, this Court has often reminded members of the bench and bar that a special civil action for *certiorari* under Rule 65 lies only when there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law.[13] In the case at hand, petitioner impetuously filed a petition for *certiorari* before us when a petition for review was available as a speedy and adequate remedy. Notably, petitioner filed the present petition 58[14] days after it received a copy of the assailed resolution dated May 26, 2005. To our mind, this belated action evidences petitioner's effort to substitute for a lost appeal this petition for *certiorari*.

For the extraordinary remedy of *certiorari* to lie by reason of grave abuse of discretion, the abuse of discretion must be

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[11] SEC. 4. *When and where petition filed*. - The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolutionsought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

[12] *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, *supra* at 316.

[13] *Id.*

[14] Petitioner received a copy of the assailed Resolution dated May 26, 2005 on May 31, 2005.

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so patent and gross as to amount to an evasion of positive duty, or a virtual refusal to perform the duty enjoined or to act in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion and personal hostility.[15] We find no grave abuse of discretion on the part of the appellate court in this case.

Simply, the resolution of the issues posed by petitioner rests on a determination of the nature of the petition filed by respondents in the RTC. Both the RTC and Court of Appeals ruled that the action is in the form of a derivative suit although captioned as a petition for annulment of real estate mortgage and foreclosure sale.

A derivative action is a suit by a shareholder to enforce a corporate cause of action.[16] Under the Corporation Code, where a corporation is an injured party, its power to sue is lodged with its board of directors or trustees. But an individual stockholder may be permitted to institute a derivative suit on behalf of the corporation in order to protect or vindicate corporate rights whenever the officials of the corporation refuse to sue, or are the ones to be sued, or hold control of the corporation. In such actions, the corporation is the real party-in-interest while the suing stockholder, on behalf of the corporation, is only a nominal party.[17]

In the case of *Filipinas Port Services, Inc. v. Go,*[18] we enumerated the foregoing requisites before a stockholder can file a derivative suit:

a) the party bringing suit should be a shareholder as of the time of the act or transaction complained of, the number of his shares not being material;

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[15] *Banco Filipino Savings and Mortgage Bank v. Court of Appeals, supra* at 315.

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

[17] *Filipinas Port Services, Inc. v. Go*, G.R. No. 161886, March 16, 2007, 518 SCRA 453, 471.

[18] *Id*.

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b) he has tried to exhaust intra-corporate remedies, *i.e.*, has made a demand on the board of directors for the appropriate relief but the latter has failed or refused to heed his plea; and

c) 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.[19]

Even then, not every suit filed on behalf of the corporation is a derivative suit. For a derivative suit to prosper, 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.[20] The Court finds that Roberto had satisfied this requirement in paragraph five (5) of his petition which reads:

5. Individual petitioner, being a minority stockholder, is instituting the instant proceeding by way of a derivative suit to redress wrongs done to petitioner corporation and vindicate corporate rights due to the mismanagement and abuses committed against it by its officers and controlling stockholders, especially by respondent Leonora H. Torres (Leonora, for brevity) who, without authority from the Board of Directors, arrogated upon herself the power to bind petitioner corporation from incurring loan obligations and later allow company properties to be foreclosed as hereinafter set forth;[21]

Further, while it is true that the complaining stockholder must satisfactorily show that he has exhausted all means to redress his grievances within the corporation; such remedy is no longer necessary where the corporation itself is under the complete control of the person against whom the suit is being filed. The reason is obvious: a demand upon the board to institute an action and prosecute the same effectively would have been useless and an exercise in futility.[22]

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[19] *Id.* at 472.

[20] *Chua v. Court of Appeals*, G.R. No. 150793, November 19, 2004, 443 SCRA 259, 268.

[21] *Rollo*, p. 35.

[22] *Filipinas Port Services, Inc., v. Go*, *supra* at 472.

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Here, Roberto alleged in his petition that earnest efforts were made to reach a compromise among family members/ stockholders before he filed the case. He also maintained that Leonora Torres held 55% of the outstanding shares while Ma. Theresa, Glenn and Stephanie excluded him from the affairs of the corporation. Even more glaring was the fact that from June 10, 1992, when the first mortgage deed was executed until July 23, 2002, when the properties mortgaged were foreclosed, the Board of Directors of HTSI did nothing to rectify the alleged unauthorized transactions of Leonora. Clearly, Roberto could not expect relief from the board.

Derivative suits are governed by a special set of rules under A.M. No. 01-2-04-SC[23] otherwise known as the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799.[24] Section 1,[25] Rule 1 thereof expressly lists derivative suits among the cases covered by it.

As regards the venue of derivative suits, Section 5, Rule 1 of A.M. No. 01-2-04-SC states:

SEC. 5. *Venue*. - All actions covered by these Rules shall be commenced and tried in the Regional Trial Court which has jurisdiction over the principal office of the corporation, partnership, or association concerned. Where the principal office of the corporation, partnership or association is registered in the Securities and Exchange Commission as Metro Manila, the action must be filed in the city or municipality where the head office is located.

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[23] Took effect on April 1, 2001.

[24] THE SECURITIES REGULATION CODE, approved on July 19, 2000.

[25] **SECTION 1.**

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

x x x x x x x x x

(4) Derivative suits; and

x x x x x x x x x

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Thus, the Court of Appeals did not commit grave abuse of discretion when it found that respondents correctly filed the derivative suit before the Makati RTC where HTSI had its principal office.

There being no showing of any grave abuse of discretion on the part of the Court of Appeals the other alleged errors will no longer be passed upon as mere errors of judgment are not proper subjects of a petition for *certiorari*.

WHEREFORE, the instant petition is hereby *DISMISSED*. The Decision dated March 10, 2005 and the Resolution dated May 26, 2005 of the Court of Appeals in CA-G.R. SP. No. 83919 are *AFFIRMED*.

No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, [*] *Chico-Nazario,* [**] *Leonardo-de Castro,* [***] and *Brion, JJ., concur.*

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[*] Designated member of the Second Division per Special Order No. 645 in place of Associate Justice Conchita Carpio Morales who is on official leave.

[**] Designated member of the Second Division per Special Order No. 658.

[***] Designated member of the Second Division per Special Order No. 635 in view of the retirement of Associate Dante O. Tinga.