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WHEREFORE, this petition is hereby **GRANTED** and the complaint against CBIC is **DISMISSED** for lack of merit. The January 29, 2004 Decision and October 28, 2004 Resolution of the Court of Appeals in **CA-G.R. CV No. 58001** is **MODIFIED** insofar as it affirmed CBIC's liability on Surety Bond No. G (16) 29419 and Endorsement No. 33152.

SO ORDERED.

Bersamin, del Castillo, Villarama, Jr., and *Perlas-Bernabe,*[**] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 170783. June 18, 2012]

LEGASPI TOWERS 300, INC., LILIA MARQUINEZ PALANCA, ROSANNA D. IMAI, GLORIA DOMINGO and RAY VINCENT, *petitioners, vs.* **AMELIA P. MUER, SAMUEL M. TANCHOCO, ROMEO TANKIANG, RUDEL PANGANIBAN, DOLORES AGBAYANI, ARLENEDAL A. YASUMA, GODOFREDO M. CAGUIOA and EDGARDO M. SALANDANAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; A JUDGE HAS AN INHERENT RIGHT, WHILE HIS JUDGMENT IS STILL UNDER HIS CONTROL, TO CORRECT ERRORS, MISTAKES, OR INJUSTICES.— It is clear that in the Orders dated July 21, 2004, the trial court did not admit the Second Amended Complaint wherein petitioners made the condominium

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[**] Per Special Order No. 1227 dated May 30, 2012.

corporation, Legaspi Towers 300, Inc., the party-plaintiff. In the Order dated September 24, 2004, denying petitioners' motion for reconsideration of the Orders dated July 21, 2004, the RTC explained its action x x x. The courts have the inherent power to amend and control their processes and orders so as to make them conformable to law and justice. A judge has an inherent right, while his judgment is still under his control, to correct errors, mistakes, or injustices.

2. COMMERCIAL LAW; CORPORATIONS; DEPRIVATIVE SUIT; DISTINGUISHED FROM AN INDIVIDUAL/CLASS SUIT.— The Court agrees with the Court of Appeals that the Second Amended Complaint is meant to be a derivative suit filed by petitioners in behalf of the corporation. The Court of Appeals stated in its Decision that petitioners justified the inclusion of Legaspi Towers 300, Inc. as plaintiff in Civil Case No. 0410655 by invoking the doctrine of derivative suit x x x. ***Cua, Jr. v. Tan*** differentiates a derivative suit and an individual/class suit as follows: A derivative suit must be differentiated from individual and representative or class suits, thus: Suits by stockholders or members of a corporation based on wrongful or fraudulent acts of directors or other persons may be classified into individual suits, class suits, and derivative suits. Where a stockholder or member is denied the right of inspection, his suit would be **individual because the wrong is done to him personally and not to the other stockholders or the corporation**. Where the **wrong is done to a group of stockholders**, as where preferred stockholders' rights are violated, a **class or representative suit will be proper for the protection of all stockholders belonging to the same group**. But where the **acts complained of constitute a wrong to the corporation itself**, **the cause of action belongs to the corporation** and not to the individual stockholder or member. Although in most every case of wrong to the corporation, each stockholder is necessarily affected because the value of his interest therein would be impaired, this fact of itself is not sufficient to give him an individual cause of action since the corporation is a person distinct and separate from him, and can and should itself sue the wrongdoer. Otherwise, not only would the theory of separate entity be violated, but there would be multiplicity of suits as well as a violation of the priority rights of creditors. Furthermore, there is the difficulty of

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determining the amount of damages that should be paid to each individual stockholder. However, in cases of **mismanagement where the wrongful acts are committed by the directors or trustees themselves,** a stockholder or member may find that he has no redress because the former are vested by law with the right to decide whether or not the corporation should sue, and they will never be willing to sue themselves. The corporation would thus be helpless to seek remedy**. Because of the frequent occurrence of such a situation, the common law gradually recognized the right of a stockholder to sue on behalf of a corporation in what eventually became known as a "derivative suit."** It has been proven to be an effective remedy of the minority against the abuses of management. **Thus, an individual stockholder is permitted to institute a derivative suit *on behalf of the corporation* wherein he holds stock in order to protect or vindicate corporate rights, whenever officials of the corporation refuse to sue or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as the *nominal party*, with the corporation as the *party-in- interest***.

3. ID.; ID.; ID.; REQUISITES.— Since it is the corporation that is the real party-in-interest in a derivative suit, then the reliefs prayed for must be for the benefit or interest of the corporation. When the reliefs prayed for do not pertain to the corporation, then it is an improper derivative suit. The requisites for a derivative suit are as follows: 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 being caused to the corporation and not to the particular stockholder bringing the suit.

4. ID.; ID.; ID.; DERIVATIVE SUIT FILED IN CASE AT BAR IS IMPROPER; THE STOCKHOLDER'S RIGHT TO FILE A DERIVATIVE SUIT IS NOT BASED ON ANY EXPRESS PROVISION OF THE CORPORATION CODE, BUT IS IMPLIEDLY RECOGNIZED WHEN THE LAW MAKES

CORPORATE DIRECTORS OR OFFICERS LIABLE FOR DAMAGES SUFFERED BY THE CORPORATION AND ITS STOCKHOLDERS FOR VIOLATION OF THEIR FIDUCIARY DUTIES; NOT APPLICABLE.— In this case, petitioners, as members of the Board of Directors of the condominium corporation *before* the election in question, filed a complaint against the newly-elected members of the Board of Directors for the years 2004-2005, questioning the validity of the election held on April 2, 2004, as it was allegedly marred by lack of quorum, and praying for the nullification of the said election. As stated by the Court of Appeals, petitioners' complaint seek to nullify the said election, and to protect and enforce their individual right to vote. Petitioners seek the nullification of the election of the Board of Directors for the years 2004-2005, composed of herein respondents, who pushed through with the election even if petitioners had adjourned the meeting allegedly due to lack of quorum. Petitioners are the injured party, whose rights to vote and to be voted upon were directly affected by the election of the new set of board of directors. The party-in-interest are the petitioners as stockholders, who wield such right to vote. The cause of action devolves on petitioners, not the condominium corporation, which did not have the right to vote. Hence, the complaint for nullification of the election is a **direct action** by petitioners, who were the members of the Board of Directors of the corporation *before* the election, against respondents, who are the newly-elected Board of Directors. Under the circumstances, the derivative suit filed by petitioners in behalf of the condominium corporation in the Second Amended Complaint is improper. The stockholder's right to file a derivative suit is not based on any express provision of *The Corporation Code*, but is impliedly recognized when the law makes corporate directors or officers liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties, which is not the issue in this case.

5. REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC; THE VALID ELECTION OF NEW SET OF DIRECTORS RENDERED THE PETITION MOOT AND ACADEMIC.— Petitioners question the validity of the election of the Board of Directors for the **years 2004-2005**, which election they seek to nullify in Civil Case No. 04-109655. However, the valid

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election of a new set of Board of Directors for the **years 2005-2006** would, indeed, render this petition moot and academic.

APPEARANCES OF COUNSEL

Pelaez Gregorio Gregorio & Lim for petitioners.
Marlito I. Villanueva Law Office for respondents.
Rudel H. Panganiban & Associates for Rudel Panganiban.

D E C I S I O N

PERALTA,* ***J.*:**

This is a petition for review on *certiorari* of the Court of Appeals' Decision[1] dated July 22, 2005 in CA-G.R. CV No. 87684, and its Resolution[2] dated November 24, 2005, denying petitioners' motion for reconsideration.

The Court of Appeals held that Judge Antonio I. De Castro of the Regional Trial Court (RTC) of Manila, Branch 3, did not commit grave abuse of discretion in issuing the Orders dated July 21, 2004 and September 24, 2004 in Civil Case No. 04-109655, denying petitioners' *Motion to Admit Second Amended Complaint*.

The facts, as stated by the Court of Appeals, are as follows:

Pursuant to the by-laws of Legaspi Towers 300, Inc., petitioners Lilia Marquinez Palanca, Rosanna D. Imai, Gloria Domingo and Ray Vincent, the incumbent Board of Directors, set the annual meeting of the members of the condominium corporation and the election of the new Board of Directors for the years 2004-2005 on April 2, 2004 at 5:00 p.m. at the lobby of Legaspi Towers 300, Inc.

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* Per Special Order No. 1228 dated June 6, 2012.

[1] Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Conrado M. Vasquez, Jr. and Aurora Santiago-Lagman, concurring, *rollo*, pp. 36-49.

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

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Out of a total number of 5,723 members who were entitled to vote, 1,358 were supposed to vote through their respective proxies and their votes were critical in determining the existence of a quorum, which was at least 2,863 (50% plus 1). The Committee on Elections of Legaspi Towers 300, Inc., however, found most of the proxy votes, at its face value, irregular, thus, questionable; and for lack of time to authenticate the same, petitioners adjourned the meeting for lack of quorum.

However, the group of respondents challenged the adjournment of the meeting. Despite petitioners' insistence that no quorum was obtained during the annual meeting held on April 2, 2004, respondents pushed through with the scheduled election and were elected as the new Board of Directors and officers of Legaspi Towers 300, Inc. Subsequently, they submitted a General Information Sheet to the Securities and Exchange Commission (SEC) with the following new set of officers: Amelia P. Muer, President; Samuel M. Tanchoco, Internal Vice President; Romeo V. Tankiang, External Vice-President; Rudel H. Panganiban, Secretary; Dolores B. Agbayani, Assistant Secretary; Arlenedal A. Yasuma, Treasurer; Godofredo M. Caguioa, Assistant Treasurer; and Edgardo M. Salandanan, Internal Auditor.

On April 13, 2004, petitioners filed a *Complaint for the Declaration of Nullity of Elections with Prayers for the lssuance of Temporary Restraining Orders and Writ of Preliminary Injunction and Damages* against respondents with the RTC of Manila. Before respondents could file an Answer to the original Complaint, petitioners filed an *Amended Complaint*, which was admitted by the RTC in an Order dated April 14, 2004.

On April 20, 2004, before respondents could submit an Answer to the Amended Complaint, petitioners again filed an *Urgent Ex-Parte Motion to Admit Second Amended Complaint and for the lssuance of Ex-Parte Temporary Restraining Order Effective only for Seventy-Two (72) Hours.* It was stated in the said pleading that the case was raffled to Branch 24, but Presiding Judge Antonio Eugenio, Jr. inhibited himself from handling the case; and when the case was assigned to Branch

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46, Presiding Judge Artemio S. Tipon also inhibited himself from the case.

On April 21, 2004, Executive Judge Enrico A. Lanzanas of the RTC of Manila acted on the Motion for the Issuance of an *Ex Parte* Temporary Restraining Order, and issued an Order disposing, thus:

> WHEREFORE, pursuant to administrative Circular No. 20-95 of the Supreme Court, a seventy-two (72) hour Temporary Restraining Order is hereby issued, enjoining defendants from taking over management, or to maintain a *status quo*, in order to prevent further irreparable damages and prejudice to the corporation, as day-to-day activities will be disrupted and will be paralyzed due to the legal controversy.[3]

On the same date, April 21, 2004, respondents filed their Answer[4] to the *Amended Complaint*, alleging that the election on April 2, 2004 was lawfully conducted. Respondents cited the Report[5] of SEC Counsel Nicanor P. Patricio, who was ordered by the SEC to attend the annual meeting of Legaspi Towers 300, Inc. on April 2, 2004. Atty. Patricio stated in his Report that at 5:40 p.m. of April 2, 2004, a representative of the Board of the condominium corporation stated that the scheduled elections could not proceed because the Election Committee was not able to validate the authenticity of the proxies prior to the election due to limited time available as the submission was made only the day before. Atty. Patricio noted that the Board itself fixed the deadline for submission of proxies at 5:00 p.m. of April 1, 2004. One holder of proxy stood up and questioned the motives of the Board in postponing the elections. The Board objected to this and moved for a declaration of adjournment. There was an objection to the adjournment, which was ignored by the Board. When the Board adjourned the meeting despite the objections of the unit owners, the unit owners who objected to the adjournment gathered themselves at the same place of the meeting

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[3] Records, p. 85.

[4] *Id.* at 96.

[5] *Id.* at 133.

and proceeded with the meeting. The attendance was checked from among the members who stayed at the meeting. Proxies were counted and recorded, and there was a declaration of a quorum – out of a total of 5,721 votes, 2,938 were present either in person or proxy. Thereafter, ballots were prepared, proxies were counterchecked with the number of votes entitled to each unit owner, and then votes were cast. At about 9:30 p.m., canvassing started, and by 11:30 p.m., the newly-elected members of the Board of Directors for the years 2004-2005 were named.

Respondents contended that from the proceedings of the election reported by SEC representative, Atty. Patricio, it was clear that the election held on April 2, 2004 was legitimate and lawful; thus, they prayed for the dismissal of the complaint for lack cause of action against them.

This case was scheduled to be re-raffled to regular courts on April 22, 2004, and was assigned to Judge Antonio I. De Castro of the RTC of Manila, Branch 3 (trial court).

On April 26, 2004, the trial court conducted a hearing on the injunction sought by petitioners, and issued an Order clarifying that the TRO issued by Executive Judge Enrico A. Lanzanas, enjoining respondents from taking over management, was not applicable as the current Board of Directors (respondents) had actually assumed management of the corporation. The trial court stated that the *status quo* mentioned in the said TRO shall mean that the current board of directors shall continue to manage the affairs of the condominium corporation, but the court shall monitor all income earned and expenses incurred by the corporation. The trial court stated:

> Precisely this complaint seeks to annul the election of the Board due to alleged questionable proxy votes which could not have produced a quorum. As such, there is nothing to enjoin and so injunction shall fail. As an answer has been filed, the case is ripe for pre-trial and the parties are directed to file their pre-trial briefs by May 3, 2004.
>
> **As plaintiffs' second amended complaint is admitted by the Court, defendants are given up to May 3, 2004 to file a comment**

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thereto. In the meantime, the banks and other persons & entities are advised to recognize the Board headed by its president, Amelia Muer. All transactions made by the Board and its officers for the corporation are considered legal for all intents and purposes.[6]

On May 3, 2004, respondents filed a Comment on the Motion to Amend Complaint, praying that the name of Legaspi Towers 300, Inc., as party-plaintiff in the Second Amended Complaint, be deleted as the said inclusion by petitioners was made without the authority of the current Board of Directors, which had been recognized by the trial court in its Order dated April 26, 2004.

During the pre-trial conference held on July 21, 2004, the trial court resolved various incidents in the case and other issues raised by the contending parties. One of the incidents acted upon by the trial court was petitioners' motion to amend complaint to implead Legaspi Towers 300, Inc. as plaintiff, which motion was denied with the issuance of two Orders both dated July 21, 2004. The first Order[7] held that the said motion could not be admitted for being improper, thus:

x x x x x x x x x

On plaintiffs' motion to admit amended complaint (to include Legaspi Towers 300, Inc. as plaintiff), the Court rules to deny the motion for being improper. (A separate Order of even date is issued.) As prayed for, movants are given 10 days from today to file a motion for reconsideration thereof, while defendants are given 10 days from receipt thereof to reply.[8]

The second separate Order,[9] also dated July 21, 2004, reads:

This resolves plaintiffs' motion to amend complaint to include Legaspi Towers 300, Inc. as party-plaintiff and defendants' comment thereto. Finding no merit therein and for the reasons stated in the comment, the motion is hereby DENIED.

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[6] RTC Order dated April 26, 2004, *rollo*, p. 162. (Emphasis and underscoring supplied.)

[7] CA *rollo*, p. 36.

[8] *Rollo*, p. 91.

[9] *Id.* at 89.

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Petitioners filed a Motion for Reconsideration of the Orders dated July 21, 2004. In the Order[10] dated September 24, 2004, the trial court denied the motion for reconsideration for lack of merit.

Petitioners filed a petition for *certiorari* with the Court of Appeals alleging that the trial court gravely abused its discretion amounting to lack or excess of jurisdiction in issuing the Orders dated July 21, 2004 and September 24, 2004, and praying that judgment be rendered annulling the said Orders and directing RTC Judge De Castro to admit their Second Amended Complaint.

In a Decision dated July 22, 2005, the Court of Appeals dismissed the petition for lack of merit. It held that RTC Judge De Castro did not commit grave abuse of discretion in denying petitioners' *Motion To Admit Second Amended Complaint.*

The Court of Appeals stated that petitioners' complaint sought to nullify the election of the Board of Directors held on April 2, 2004, and to protect and enforce their individual right to vote. The appellate court held that as the right to vote is a personal right of a stockholder of a corporation, such right can only be enforced through a direct action; hence, Legaspi Towers 300, Inc. cannot be impleaded as plaintiff in this case.

Petitioners' motion for reconsideration was denied by the Court of Appeals in a Resolution dated November 24, 2005.

Petitioners filed this petition raising the following issues:

I

THE HONORABLE COURT OF APPEALS ERRED IN RESOLVING THAT PUBLIC RESPONDENT-APPELLEE DID NOT COMMIT ANY WHIMSICAL, ARBITRARY AND OPPRESSIVE EXERCISE OF JUDICIAL AUTHORITY WHEN THE LATTER REVERSED HIS EARLIER RULING ALREADY ADMITTING THE SECOND AMENDED COMPLAINT OF PETITIONERS-APPELLANTS.

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[10] Records, p. 375.

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II

THERE IS NO LEGAL BASIS FOR THE HONORABLE COURT OF APPEALS TO RESOLVE THAT PETITIONERS-APPELLANTS HAVE NO RIGHT AS BOARD OF DIRECTORS TO BRING AN ACTION IN BEHALF OF LEGASPI TOWERS 300, INC.

III

THERE IS NO LEGAL BASIS FOR THE HONORABLE COURT OF APPEALS TO RESOLVE THAT THE ELECTIONS CONDUCTED IN LEGASPI TOWERS 300, INC. FOR THE PERIOD OF 2005 TO 2006 HAVE RENDERED THE ISSUE IN CIVIL CASE NO. 04-10655 MOOT AND ACADEMIC.[11]

Petitioners contend that the Court of Appeals erred in not finding that RTC Judge Antonio I. De Castro committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying the admission of the Second Amended Complaint in the Orders dated July 21, 2004 and September 24, 2004, despite the fact that he had already ordered its admission in a previous Order dated April 26, 2004.

Petitioners' contention is unmeritorious.

It is clear that in the Orders dated July 21, 2004, the trial court did not admit the Second Amended Complaint wherein petitioners made the condominium corporation, Legaspi Towers 300, Inc., the party-plaintiff. In the Order dated September 24, 2004, denying petitioners' motion for reconsideration of the Orders dated July 21, 2004, the RTC explained its action, thus:

> x x x The word "admitted" in the 3rd paragraph of the Order dated April 26, 2004 should read "received" for which defendants were told to comment thereon as an answer has been filed. It was an oversight of the clerical error in said Order.
>
> The Order of July 21, 2004 states "amended complaint" in the 3rd paragraph thereof and so it does not refer to the second amended complaint. The amended complaint was admitted by the court of origin – Br. 24 in its Order of April 14, 2004 as there was no responsive pleading yet.

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[11] *Rollo*, p. 19.

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Nonetheless, admission of the second amended complaint is improper. Why should Legaspi Towers 300, Inc. x x x be included as party-plaintiff when defendants are members thereof too like plaintiffs. Both parties are deemed to be acting in their personal capacities as they both claim to be the lawful board of directors. The motion for reconsideration for the admission of the second amended complaint is hereby DENIED.[12]

The courts have the inherent power to amend and control their processes and orders so as to make them conformable to law and justice.[13] A judge has an inherent right, while his judgment is still under his control, to correct errors, mistakes, or injustices.[14]

Next, petitioners state that the Court of Appeals seems to be under the impression that the action instituted by them is one brought forth solely by way of a derivative suit. They clarified that the inclusion of Legaspi Towers 300, Inc. as a party-plaintiff in the Second Amended Complaint was, first and foremost, intended as a direct action by the corporation acting through them (petitioners) as the reconstituted Board of Directors of Legaspi Towers 300, Inc. Petitioners allege that their act of including the corporation as party-plaintiff is consistent with their position that the election conducted by respondents was invalid; hence, petitioners, under their by-laws, could reconstitute themselves as the Board of Directors of Legaspi Towers 300, Inc. in a hold-over capacity for the succeeding term. By so doing, petitioners had the right as the rightful Board of Directors to bring the action in representation of Legaspi Towers 300, Inc. Thus, the Second Amended Complaint was intended by the petitioners as a direct suit by the corporation joined in by the petitioners to protect and enforce their common rights.

Petitioners contend that Legaspi Towers 300, Inc. is a real party-in- interest as it stands to be affected the most by the controversy, because it involves the determination of whether

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[12] *Id.* at 93.

[13] *Sta. Maria v. Ubay*, A.M. No. 595-CFI, December 11, 1978, 87 SCRA 179, 187.

[14] *Id.*

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or not the corporation's by-laws was properly carried out in the meeting held on April 2, 2004, when despite the adjournment of the meeting for lack of quorum, the elections were still conducted. Although petitioners admit that the action involves their right to vote, they argue that it also involves the right of the condominium corporation to be managed and run by the duly-elected Board of Directors, and to seek redress against those who wrongfully occupy positions of the corporation and who may mismanage the corporation.

Petitioners' argument is unmeritorious.

The Court notes that in the Amended Complaint, petitioners as plaintiffs stated that they are the incumbent reconstituted Board of Directors of Legaspi Towers 300, Inc., and that defendants, herein respondents, are the newly-elected members of the Board of Directors; while in the Second Amended Complaint, the plaintiff is Legaspi Towers 300, Inc., represented by petitioners as the allegedly incumbent reconstituted Board of Directors of Legaspi Towers 300, Inc.

The Second Amended Complaint states who the plaintiffs are, thus:

> **1. That the plaintiffs are: LEGASPI TOWERS 300, INC**., non-stock corporation xxx **duly represented by the incumbent reconstituted Board of Directors of Legaspi Towers 300, Inc.**, namely: ELIADORA FE BOTE VERA xxx, as President; BRUNO C. HAMAN xxx, as Director; LILY MARQUINEZ PALANCA xxx, as Secretary; ROSANNA DAVID IMAI xxx, as Treasurer; and members of the Board of Directors, namely: ELIZABETH GUERRERO xxx, GLORIA DOMINGO xxx, and RAY VINCENT.[15]

The Court agrees with the Court of Appeals that the Second Amended Complaint is meant to be a derivative suit filed by petitioners in behalf of the corporation. The Court of Appeals stated in its Decision that petitioners justified the inclusion of Legaspi Towers 300, Inc. as plaintiff in Civil Case No. 0410655

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[15] Records, p. 65. (Emphasis supplied.)

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by invoking the doctrine of derivative suit, as petitioners specifically argued, thus:

x x x x x x x x x

x x x [T]he sudden takeover by private respondents of the management of Legaspi Towers 300, Inc. has only proven the rightfulness of petitioners' move to include Legaspi Towers 300, Inc. as party-plaintiff. This is because every resolution passed by private respondents sitting as a board result[s] in violation of Legaspi Towers 300, Inc.'s right to be managed and represented by herein petitioners.

In short, the amendment of the complaint [to include] Legaspi Towers 300, Inc. was done in order to protect the interest and enforce the right of the Legaspi [Towers 300,] Inc. to be administered and managed [by petitioners] as the duly constituted Board of Directors. **This is no different from and may in fact be considered as a DERIVATIVE SUIT instituted by an individual stockholder against those controlling the corporation but is being instituted in the name of and for the benefit of the corporation whose right/s are being violated**.[16]

Is a derivative suit proper in this case?

Cua, Jr. v. Tan[17] differentiates a derivative suit and an individual/class suit as follows:

A derivative suit must be differentiated from individual and representative or class suits, thus:

> Suits by stockholders or members of a corporation based on wrongful or fraudulent acts of directors or other persons may be classified into individual suits, class suits, and derivative suits. Where a stockholder or member is denied the right of inspection, his suit would be **individual because the wrong is done to him personally and not to the other stockholders or the corporation**. Where the **wrong is done to a group of stockholders**, as where preferred stockholders' rights are violated, a **class or representative suit will be proper for the protection of all stockholders belonging to the same**

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[16] CA Decision, *rollo*, pp. 42-43. (Emphases supplied by the CA.)

[17] G.R. Nos. 181455-56 & 182008, December 4, 2009, 607 SCRA 645.

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> **group**. But where the **acts complained of constitute a wrong to the corporation itself**, **the cause of action belongs to the corporation** and not to the individual stockholder or member. Although in most every case of wrong to the corporation, each stockholder is necessarily affected because the value of his interest therein would be impaired, this fact of itself is not sufficient to give him an individual cause of action since the corporation is a person distinct and separate from him, and can and should itself sue the wrongdoer. Otherwise, not only would the theory of separate entity be violated, but there would be multiplicity of suits as well as a violation of the priority rights of creditors. Furthermore, there is the difficulty of determining the amount of damages that should be paid to each individual stockholder.
>
> However, in cases of **mismanagement where the wrongful acts are committed by the directors or trustees themselves,** a stockholder or member may find that he has no redress because the former are vested by law with the right to decide whether or not the corporation should sue, and they will never be willing to sue themselves. The corporation would thus be helpless to seek remedy**. Because of the frequent occurrence of such a situation, the common law gradually recognized the right of a stockholder to sue on behalf of a corporation in what eventually became known as a "derivative suit."** It has been proven to be an effective remedy of the minority against the abuses of management. **Thus, an individual stockholder is permitted to institute a derivative suit *on behalf of the corporation* wherein he holds stock in order to protect or vindicate corporate rights, whenever officials of the corporation refuse to sue or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as the *nominal party*, with the corporation as the *party-in- interest***.[18]

Since it is the corporation that is the real party-in-interest in a derivative suit, then the reliefs prayed for must be for the benefit or interest of the corporation.[19] When the reliefs prayed

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[18] *Id.* at 690-691. (Emphases and underscoring supplied.)

[19] Cesar L. Villanueva, *Philippine Corporate Law*, ©1998, p. 375.

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for do not pertain to the corporation, then it is an improper derivative suit.[20]

The requisites for a derivative suit are as follows:

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 being caused to the corporation and not to the particular stockholder bringing the suit.[21]

In this case, petitioners, as members of the Board of Directors of the condominium corporation *before* the election in question, filed a complaint against the newly-elected members of the Board of Directors for the years 2004-2005, questioning the validity of the election held on April 2, 2004, as it was allegedly marred by lack of quorum, and praying for the nullification of the said election.

As stated by the Court of Appeals, petitioners' complaint seek to nullify the said election, and to protect and enforce their individual right to vote. Petitioners seek the nullification of the election of the Board of Directors for the years 2004-2005, composed of herein respondents, who pushed through with the election even if petitioners had adjourned the meeting allegedly due to lack of quorum. Petitioners are the injured party, whose rights to vote and to be voted upon were directly affected by the election of the new set of board of directors. The party-in-interest are the petitioners as stockholders, who wield such right to vote. The cause of action devolves on petitioners, not the condominium corporation, which did not have the right to vote.

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[20] *Id.*

[21] *San Miguel Corporation v. Kahn*, G.R. No. 85339, August 11, 1989, 176 SCRA 447, 462-463. (Underscoring supplied.)

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Hence, the complaint for nullification of the election is a **direct action** by petitioners, who were the members of the Board of Directors of the corporation *before* the election, against respondents, who are the newly-elected Board of Directors. Under the circumstances, the derivative suit filed by petitioners in behalf of the condominium corporation in the Second Amended Complaint is improper.

The stockholder's right to file a derivative suit is not based on any express provision of *The Corporation Code*, but is impliedly recognized when the law makes corporate directors or officers liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties,[22] which is not the issue in this case.

Further, petitioners' change of argument before this Court, asserting that the Second Amended Complaint is a direct action filed by the corporation, represented by the petitioners as the incumbent Board of Directors, is an afterthought, and lacks merit, considering that the newly-elected Board of Directors had assumed their function to manage corporate affairs.[23]

In fine, the Court of Appeals correctly upheld the Orders of the trial court dated July 21, 2004 and September 24, 2004 denying petitioners' *Motion to Admit Second Amended Complaint*.

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[22] *Bitong v. Court of Appeals*, G.R. No. 123553, July 13, 1998, 292 SCRA 503, 532.

[23] Corporation Code: Sec. 36. *Corporate powers and capacity*. — Every corporation incorporated under this Code has the power and capacity:

To sue and be sued in its corporate name;

x x x x x x x x x

Sec. 23. *The board of directors or trustees*. – Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified.

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Lastly, petitioners contend that the Court of Appeals erred in resolving that the recent elections conducted by Legaspi Towers, 300, Inc. have rendered the issue raised *via* the special civil action for *certiorari* before the appellate court moot and academic.

The Court of Appeals, in its Resolution dated November 24, 2005, stated:

> x x x [T]he election of the corporation's new set of directors for the years 2005-2006 has, finally, rendered the petition at bench moot and academic. As correctly argued by private respondents, the nullification of the orders assailed by petitioners would, therefore, be of little or no practical and legal purpose.[24]

The statement of the Court of Appeals is correct.

Petitioners question the validity of the election of the Board of Directors for the **years 2004-2005**, which election they seek to nullify in Civil Case No. 04-109655. However, the valid election of a new set of Board of Directors for the **years 2005-2006** would, indeed, render this petition moot and academic.

WHEREFORE, the petition is **DENIED.** The Decision of the Court of Appeals in CA-G.R. CV No. 87684, dated July 22, 2005, and its Resolution dated November 24, 2005 are **AFFIRMED.**

Costs against petitioners.

SO ORDERED.

Bersamin,[**] *Abad, Villarama, Jr.,*[***] and *Perlas-Bernabe, JJ.,* concur.

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[24] *Rollo,* p. 54.

[**] Designated Acting Member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 1241 dated June 14, 2012.

[***] Designated Acting Member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1229 dated June 6, 2012.