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FIRST DIVISION

[G.R. No. 218738; March 9, 2022]

METROPOLITAN BANK & TRUST COMPANY (METROBANK), *Petitioner*, *v*. **SALAZAR REALTY CORPORATION[*] represented by incorporators/ stockholders Ramon Ang Salazar, Jr., Robert Ang Salazar, Roger Ang Salazar, and Rosemarie Salazar Fernandez,[**]** *Respondents*.

D E C I S I O N

GAERLAN, *J.*:

The present petition for review on *certiorari*[1] assails the Decision[2] and the Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 05050, which dismissed Metropolitan Bank & Trust Company's (Metrobank) petition for *certiorari* against the June 16, 2009[4] and February 23, 2010[5] Orders issued by Branch 9 of the Regional Trial Court (RTC) of Tacloban City, in Civil Case No. 2001-11-164.

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[*] Also referred to in the records as "Salazar Ang Realty Corporation."

[**] Presiding Judge Rogelio C. Sescon of the Regional Trial Court of Tacloban City, Branch 9 was dropped as a party respondent pursuant to Rule 45, Section 4 of the Rules of Court. See Supreme Court Resolution dated August 17, 2015, *rollo,* p. 528.

[1] Id. at 32-68.

[2] Id. at 12-24. Promulgated on March 25, 2014. Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Gabriel T. Ingles and Ma. Luisa C. Quijano-Padilla concurring.

[3] Id. at 27-29. Promulgated on May 8, 2015. Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Gabriel T. Ingles and Ma. Luisa C. Quijano-Padilla concurring.

[4] Id. at 140-145.

[5] Id. at 146.

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Antecedents

Petitioner Metrobank and respondent Salazar Realty Corporation (SARC) are both Philippine corporations. Metrobank is engaged in the banking business,[6] while SARC is engaged in the real estate business.[7] Also involved in the events preceding the present litigation is another Philippine corporation, Tacloban RAS Construction Corporation (Tacloban RAS).

On November 5, 2001, SARC filed an action for quieting of title and nullification of contracts against Metrobank before the RTC of Tacloban City.[8] The petition was docketed as Civil Case No. 2001-11-164.[9] SARC alleged that:

1) Based on its latest filings at the time of the filing of the petition, SARC had the following officers, who also composed its board of directors:[10] Raymund A. Salazar, President; Ramon Ve. Salazar, Vice President; Ralph A. Salazar,[11] Secretary; Rosarie A. Salazar, Treasurer; Consuelo A. Salazar,[12] Member, Board of Directors.

2) On October 6, 1992, Tacloban RAS obtained a loan from Metrobank in the amount of ten million pesos (₱10,000,000.00).[13] On January 9, 1996, the loan amount was increased to twelve million pesos (₱12,000,000.00); and on October 6, 1999 it was further increased to eighteen million five hundred thousand pesos (₱18,500,000.00).[14] This final amount was reflected in a promissory note executed on October 6, 1999 between Tacloban

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[6] Id. at 34.

[7] Id. at 178-180.

[8] Id. at 147.

[9] Id.

[10] Id. at 149, 195.

[11] Hereinafter referred to as Ralph. Also referred to in the records as "Ralph Pastor A. Salazar."

[12] Hereinafter referred to as Consuelo.

[13] *Rollo,* p. 148.

[14] Id. at 162.

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RAS and Metrobank, which was signed by Consuelo and Ralph as president and corporate secretary, respectively, of Tacloban RAS.[15] To secure the loan, Metrobank and SARC entered into a mortgage contract on January 9, 1996, with Consuelo and Ralph still signing, this time on behalf of SARC.[16] The mortgage covered five parcels of land located in Tacloban City, which were all registered in the name of SARC.[17] The mortgage was likewise amended to cover the final amount of the loan.[18]

3) Meanwhile, on March 30, 1995, Ramon Ve. Salazar, SARC's Vice President and director, passed away. Consuelo likewise passed away on October 21, 2001. The vacancies left by their passing were left unfilled.[19]

4) The remaining directors of SARC, including Ralph, issued a board resolution approving the mortgage of the five SARC-owned lots to secure the loan obligation of Tacloban RAS.[20]

5) Tacloban RAS defaulted on the loan, prompting Metrobank to initiate extrajudicial foreclosure proceedings before the RTC of Tacloban City.[21] Metrobank emerged as the winning bidder in the auction sale.[22] Upon issuance of the certificate of sale[23] and filing of the affidavit of consolidation of ownership,[24] SARC's certificates of title were cancelled and new ones were issued in Metrobank's favor.[25]

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[15] Id. at 148.

[16] Id. at 148-149, 193-194, 225.

[17] Id. at 150-153.

[18] Id. at 162.

[19] Id. at 149.

[20] Id. at 150.

[21] Id. at 225-226.

[22] Id. at 275-281, 300.

[23] Id. at 216.

[24] Id. at 215.

[25] Id. at 210-214.

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6) Upon hearing about the auction sale, Ramon Ang Salazar, Jr., Robert Ang Salazar, Roger Ang Salazar and Rosemarie Salazar Fernandez (hereinafter referred to as Ramon, et al.) as incorporators and stockholders acting in behalf of SARC, immediately checked the status of the disputed lands with the Register of Deeds. They discovered that SARC's certificates of title had been cancelled.[26] In response, Ramon, et al. registered an adverse claim on the new certificates of title that were issued to Metrobank.[27]

7) In view of the SARC board's inaction and tacit approval of the unauthorized encumbrance and subsequent loss of the corporation's real properties, Ramon, et al. filed the present suit on SARC's behalf.

8) The loan agreement is void because Consuelo is not a stockholder or officer of Tacloban RAS, based on its incorporation papers filed with the SEC.[28]

9) The mortgage agreement and the foreclosure proceedings are void because Tacloban RAS has no authority to use SARC's properties as collateral. Rather, the authorization for such purpose was issued by the SARC board to a single proprietorship named RAS Construction, which is an entity distinct and separate from Tacloban RAS.[29]

10) SARC exceeded its corporate powers when it entered into a mortgage contract to secure the obligation of a separate, distinct, and unrelated corporation. Tacloban RAS is not a subsidiary of SARC. It likewise holds no shares or any other form of investment in the latter corporation. Thus, the mortgage contract is void for being *ultra vires* insofar as SARC is concerned.[30]

11) SARC's principal corporate assets are limited to six (6) parcels of land. Consequently, the mortgage of the five parcels

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[26] Id. at 150-153.

[27] Id. at 219-223.

[28] Id. at 154-155.

[29] Id. at 156-157.

[30] Id. at 157-160.

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in dispute, including the lot on which SARC's principal office is located, constitutes an encumbrance of substantially all the assets of the corporation which must be authorized by SARC's stockholders in a meeting for that purpose, pursuant to Section 40 of the Corporation Code. Absent such authorization, the mortgage contract is null and void.[31]

12) SARC board and stockholder approvals for the mortgage contract and the amendments thereto were not annotated on SARC's certificates of title, giving rise to the presumption that neither the SARC board nor its stockholders approved said contract and the amendments thereto.[32]

13) Metrobank failed to exercise due diligence when it extended an eighteen-million-peso loan to Tacloban RAS, whose authorized capital stock was only three million pesos. Furthermore, the loan was secured by properties owned by SARC, whose authorized capital stock was only five million pesos. More importantly, Metrobank was guilty of negligence when it failed to thoroughly investigate Consuelo and Ralph's authority to enter contracts and encumber properties on behalf of Tacloban RAS and SARC.[33]

14) Assuming that the loan and mortgage contracts are valid and binding, the foreclosure proceedings are nevertheless null and void, for the following reasons: a) Metrobank's petition for foreclosure lacks several material details which render it fatally defective under A.M. No. 99-10-05-0;[34] b) SARC was not given personal notice of the foreclosure sale; c) the publication of the notice of sale was defective because copies thereof were attached to the record only after the auction sale had taken place, and notices of publication were not furnished for all instances of publication, in violation of A.M. No. 99-10-05-0; d) there was only one bidder in the auction sale, in violation of item 5 of A.M. No. 99-10-05-0; and e) Section 47 of Republic Act No. 8791 which sets

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[31] Id. at 160-161.

[32] Id. at 161-162.

[33] Id. at 162-164.

[34] Procedure in Extra-Judicial Foreclosure of Mortgage.

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different redemption periods for natural and juridical persons is unconstitutional.[35]

Accordingly, SARC prayed that the cloud on its title be removed by: 1) nullifying the loan and mortgage agreements between Metrobank and Tacloban RAS/SARC; 2) nullifying the foreclosure proceedings initiated by Metrobank; and 3) cancelling the certificates of title issued to Metrobank.[36]

SARC's petition was raffled to Branch 9 of the Tacloban City RTC, which assumed jurisdiction over the case.

On February 13, 2002, Metrobank filed a Comment with Motion to Dismiss. It argued that Ralph had authority to enter into the loan and mortgage agreements, and that the mortgaged properties were personally owned by Ralph and Consuelo.[37] Metrobank further alleged that Consuelo personally bound herself as surety;[38] and that the final amount of the loan was agreed upon pursuant to a restructuring upon Ralph's request, with the approval of the boards of directors of both Tacloban RAS and SARC.[39]

Metrobank also argued that SARC and its stockholders have no standing to seek the cancellation of the loan and mortgage agreements since SARC is not a party thereto.[40] It also argued that the petition filed by SARC through Ramon, et al. is in the nature of a derivative suit which must be directed against SARC's officers, directors, or stockholders. Likewise, since the petition is in the nature of a derivative suit, it is an intra-corporate controversy over which regular courts like Branch 9 of the Tacloban City RTC have no jurisdiction.[41] Metrobank thus prayed that the petition be

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[35] *Rollo,* pp. 164-173.

[36] Id. at 174.

[37] Id. at 305-307.

[38] Id. at 307.

[39] Id. at 307-308.

[40] Id. at 311-312.

[41] Id. at 311.

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dismissed for lack of standing on the part of both Ramon, et al. and SARC, and for lack of jurisdiction.

In its Reply, SARC reiterated Ralph's lack of authority to bind Tacloban RAS and SARC. It also disputed Metrobank's argument on standing, maintaining that the case was properly filed against Metrobank, who was responsible for clouding its titles by initiating the foreclosure proceedings.[42] In the same vein, SARC also rejected Metrobank's characterization of the petition as an intra-corporate controversy, arguing that the loan and mortgage contracts, as well as the foreclosure proceedings, are clouds on SARC's title which may only be removed by the RTC, thus:[43]

> 12.3 x x x [W]hat [SARC] is claiming is that [Metrobank] violated the right of ownership of the [SARC] over the lands which are the subject matter of this suit by having the same sold at foreclosure proceedings and having the titles of [SARC] corporation cancelled and transferred in [Metrobank]'s name when it did not have the right to do the same because [SARC] did not consent to the Mortgage Contract under which [Metrobank] is claiming rights and such Mortgage is not supported by a valid principal obligation as the loan was not consented to by [Tacloban RAS] based on the petition filed by [Metrobank] for the extrajudicial foreclosure of the Mortgage allegedly executed by Petitioner Salazar Ang Realty Corporation.
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> 12.4 The relief sought which is the declaration of nullity of the mortgage contract and foreclosure proceedings is demandable only from the [Metrobank] as the holder of rights under the contract as Mortgagee and the public officials responsible for performing duties under Act 3135 and not from Ralph Salazar who is not a party to the contract in question - the parties involved being Salazar Ang Realty Corporation as the alleged Mortgagor and [Metrobank] as the Mortgagee.[44]

On April 25, 2002, the trial court denied Metrobank's motion to dismiss, and ordered SARC to file an answer or other responsive pleading.[45] Thereafter, the parties filed their respective pre-

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[42] Id. at 337.

[43] Id.

[44] Id. at 338.

[45] Id. at 350.

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trial briefs. On March 11, 2003, Metrobank filed a motion for inhibition,[46] which was denied.[47] On November 6, 2005, the trial court granted SARC's request for preliminary injunction to prevent Metrobank from further enforcing its claim to the properties.[48] On February 1, 2005, Metrobank filed a Motion for Leave to File an Amended Answer with Motion to Dismiss, which was denied in an Order dated December 6, 2005.[49]

On February 2, 2009, Metrobank filed yet another motion to dismiss,[50] reiterating its argument that SARC's petition is a derivative suit and therefore an intra-corporate controversy. Under A.M. No. 00-11-03-SC, a special commercial court was created in the Tacloban City RTC; however, Branch 9, which is a regular trial court, continued to exercise jurisdiction over the present case even if it has no jurisdiction thereover other than to dismiss it.[51] SARC filed an opposition to Metrobank's motion to dismiss,[52] reiterating its stance that the case falls within the jurisdiction of the regular courts regardless of its nature as a derivative suit because the reliefs sought are within the jurisdiction of the regular courts.[53]

On June 16, 2009, the trial court issued the first assailed order denying Metrobank's latest motion to dismiss. The trial court ruled that the requirement that cases formerly cognizable by the SEC be filed with a special commercial court does not apply to the present case, which was filed before A.M. No. 03-03-03-SC took effect on July 1, 2003. Assuming that the requirement is applicable, the trial court ruled that it retains the jurisdiction to transfer the case to the special commercial court in the Tacloban City RTC,

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[46] Id. at 426-431.

[47] Id. at 435-437.

[48] Id. at 433-434.

[49] Id. at 79.

[50] Id. at 454-456.

[51] Id. at 455-456.

[52] Id. at 459-464.

[53] Id. at 459-461.

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on the ground that jurisdiction, once acquired, continues until final resolution of the case.[54] The trial court further ruled that the present case does not involve an intra-corporate controversy, because it does not involve a dispute between a corporation and its stockholders; rather, it involves a suit by a corporation through its shareholders against another corporation and certain public officers. Furthermore, as SARC correctly points out, its causes of action are within the jurisdiction of the regular courts.[55]

On February 23, 2010, the trial court rendered the second assailed order[56] denying Metrobank's motion for reconsideration.[57]

Still adamant that the case involves an intra-corporate controversy, Metrobank elevated the matter to the CA, arguing that the trial court committed grave abuse of discretion in narrowly defining intra-corporate controversies as limited to suits involving disputes between a corporation and its stockholders.[58]

In dismissing Metrobank's petition, the CA ruled that under Rule 1 of A.M. No. 01-2-04-SC, or the Interim Rules of Procedure Governing Intra-Corporate Controversies (2001 IRPIC), derivative suits are also intra-corporate controversies. Therefore, to determine if SARC's petition must be tried under the 2001 IRPIC by a special commercial court, it must pass the two-tier intra-corporate controversy test. The appellate court found that SARC's petition does not pass the two-tier test. It satisfies neither the relationship test, since it does not involve any of the intra-corporate relationships enumerated in Section 5(b) of Presidential Decree No. 902-A;[59] nor the controversy test, since it does not involve a dispute which is intrinsically connected with the regulation of SARC or a dispute which arises out of intra-

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[54] Id. at 144.

[55] Id. at 145.

[56] Id. at 146.

[57] Id. at 465-473.

[58] Id. at 115-116.

[59] Decree on the Reorganization of the Securities and Exchange Commission. Hereinafter referred to as SEC Reorganization Decree.

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corporate relations within SARC.[60] Rather, the case involves the removal of the cloud on SARC's titles, which was created by the contracts executed by Ralph and Consuelo allegedly on behalf of Tacloban RAS and SARC.[61] Furthermore, Ramon, et al. are not stockholders of the corporation they are suing; rather, they are suing on behalf of the corporation in which they hold shares.[62] Citing jurisprudence, the CA held that **"Where the complaint is for annulment of mortgage with the mortgagee bank as one of the defendants, the jurisdiction over said complaint is lodged with the regular courts because the mortgagee bank has no intra-corporate relationship with the stockholders;"**[63] and that "the question as to who is the true owner of the disputed property is civil in nature and should be threshed out by a regular court," not by a special commercial court.[64]

The CA denied Metrobank's motion for consideration[65] through the assailed resolution; hence, this petition, which raises the following errors:

1). THE COURT OF APPEALS SERIOUSLY ERRED IN USING THE TWO TIER TEST AS A GAUGE IN DETERMINING WHETHER OR NOT A SUIT IS A DERIVATIVE SUIT. ITS CONSEQUENT EMPLOYMENT OF SUCH TEST IS WITHOUT BASIS AND VIOLATES SETTLED JURISPRUDENCE, SUCH AS, THE CASE OF FILIPINAS PORT SERVICES, INC. V. GO AND HI-YIELD REALTY V. COURT OF APPEALS AND THE INTERIM RULES OF PROCEDURE GOVERNING INTRACO[R]PORATE CASES.

2). THE REGIONAL TRIAL COURT, BRANCH [9] TACLOBAN CITY, WHICH IS AN ORDINARY COURT AND NOT A COMMERCIAL COURT, DOES NOT HAVE JURISDICTION OVER A DERIVATIVE SUIT.

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[60] *Rollo,* pp. 85-87.

[61] Id. at 87.

[62] Id. at 86-87.

[63] Id. at 87. Emphasis in the original.

[64] Id. at 87-88.

[65] Id. at 478-493.

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3). THE FINDING OF THE COURT OF APPEALS THAT THE CASE A QUO IS NOT A DERIVATIVE SUIT BECAUSE THE STOCKHOLDERS WHO BROUGHT THE SUIT FOR OR ON BEHALF OF RESPONDENT CORPORATION ARE NOT STOCKHOLDERS OF PETITIONER, ASSUMING EX ARGUMENTI, IS CORRECT WILL CAUSE THE DISMISSAL OF THE CASE A QUO ON THE GROUND OF LACK OF CAUSE OF ACTION OR PERSONALITY TO SUE.[66]

The essential issue raised by the petition is whether Branch 9 of the Tacloban City RTC, not being a special commercial court, has jurisdiction over a derivative suit to annul a mortgage allegedly entered into by corporate officers without proper authorization and where the defendants are third parties with no relation to the suing corporation.

The Court's Ruling

I.

Metrobank argues that jurisdiction over derivative suits is vested in the special commercial courts. It asserts that the CA erred in applying the two-tier test to determine whether the case should be tried by a special commercial court. The two-tier test applies only to the determination of the existence of an intra-corporate controversy, and *not* to the determination of whether an action is a derivative suit, which is determined using a different three-part test.

The special commercial courts were organized pursuant to the provisions of the Securities Regulation Code (SRC).[67] Sections 4.1 and 5.2 thereof provide:

Section 4. Administrative Agency. – 4.1. This Code shall be administered by the Securities and Exchange Commission (hereinafter referred to as the "Commission") as a Collegial body, composed of a chairperson and (4) Commissioners, appointed by the President for a term of (7) seven years each and who shall serve as such until their successor shall have been appointed and qualified. A Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his/her predecessor was appointed, shall serve only for the unexpired portion

[66] Id. at 51-52. Citations omitted.

[67] REPUBLIC ACT NO. 8799, enacted on July 19, 2000.

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of their terms under Presidential Decree No. 902-A. Unless the context indicates otherwise, the term "Commissioner" includes the Chairperson.

5.2. **The Commission's jurisdiction over all cases enumerated under section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided*, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over the cases.** The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payment/rehabilitation cases filed as of 30 June 2000 until finally disposed. (Underscoring and emphasis supplied)

In turn, Section 5 of Presidential Decree No. 902-A, or the SEC Reorganization Decree, defines certain classes of disputes and the tribunal with jurisdiction over them. Over time, these classes of disputes have become known as *intra-corporate disputes* or *intra-corporate controversies*.[68]

Pursuant to the transfer of jurisdiction effected therein, Section 5.2 of the SRC also authorized the Supreme Court to designate certain RTCs to try intra-corporate disputes. Thus, the Supreme Court designated certain RTCs as *special commercial courts*[69] and enacted the 2001 IRPIC to provide for the procedure to be observed in trying the above-enumerated cases.[70] Interestingly, Rule 1,

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[68] See *Sunset View Condominium Corp. v. Hon. Campos, Jr. etc., et al.*, 191 Phil. 606, 610-611 (1981); *Philex Mining Corp. v. Hon. Reyes, et al.*, 204 Phil. 241, 245-246 (1982); *Union Glass & Container Corp., et al. v. SEC, et al.*, 211 Phil. 222, 236 (1983); *DMRC Enterprises v. Este Del Sol Mountain Reserve, Inc.*, 217 Phil. 280, 287 (1984); *Zaide, Jr. v. Court of Appeals*, 263 Phil. 464, 469 (1990); *Securities and Exchange Commission v. Court of Appeals*, 278 Phil. 141, 154 (1991); *Espino v. NLRC, et al.*, 310 Phil. 60, 73 (1995).

[69] A.M. No. 00-11-03-SC, Designation of Certain Branches of RTCs to Try and Decide Cases Formerly Cognizable by SEC, November 21, 2000; A.M. No. 03-03-03-SC, Re: Consolidation of Intellectual Property Courts with Commercial Courts, June 17, 2003.

[70] The original heading of the resolution enacting the 2001 IRPIC is "RE: Proposed Interim Rules of Procedure Governing **Intra-Corporate Controversies under R.A. No. 8799**."

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Section 1(a) of the 2001 IRPIC also enumerates the cases to which it shall be applicable. At this point, we compare this provision with Section 5 of the SEC Reorganization Decree, which remains the source provision for the subject matter jurisdiction of the special commercial courts:

Section 5, SEC Reorganization Decree	Rule 1, Section 1(a), 2001 IRPIC
SECTION 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have **original and exclusive jurisdiction to hear and decide cases involving:**	SECTION 1. (a) Cases Covered. — These Rules shall govern the procedure to be observed in civil cases involving the following:
a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission;	(1) Devices or schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association;
b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity;	(2) Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members, or associates; and between, any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively;
c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.	(3) Controversies in the election or appointment of directors, trustees, officers, or managers of corporations, partnerships, or associations; (4) Derivative suits; and (5) Inspection of corporate books.

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Conspicuous here is the fact that the first three items of both enumerations are essentially the same, for the obvious reason that the 2001 IRPIC was intended to serve as the procedural regime for the cases defined in Section 5 of the SEC Reorganization Decree, jurisdiction over which has been transferred to the RTCs. The confusion which arose in the present case is engendered partly by the addition of derivative suits as a separate item in the 2001 IRPIC.

II.

A derivative suit is one of three kinds of suits that may be filed by a stockholder or member of a corporation or association, *viz.*:

> 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, then 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 wrongdoers. 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.
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> However, **in cases of mismanagement where the wrongful acts 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 the**

corporation in what eventually became known as a "derivative suit." It has been proven to be an effective remedy of the minority against 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.[71]

In *Ago Realty & Development Corp. v. Ago*,[72] we further elaborated on this basic principle that derivative suits are equitable exception to the rule that a corporation's power to bring suits may only be exercised through its board of directors:

> While corporations are subjected to the State's broad regulatory powers, it is their directors and officers who are tasked with addressing questions of internal policy and management. The business of a corporation is conducted by its board of directors, and so long as the board acts in good faith, the State, through the courts, may not interfere with its management decisions. This finds support in Section 23 of the Corporation Code, which provides that a corporation exercises its powers, conducts its business, and controls and holds its property through its board of directors.
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> As creatures of the law, corporations only possess those powers that are granted through statute, either expressly or by way of implication, or those that are incidental to their existence.
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> One of the powers expressly granted by law to corporations is the power to sue. As with other corporate powers, the power to sue is lodged in the board of directors, acting as a collegial body. Thus, in the absence of any clear authority from the board, charter, or by-laws, no suit may be maintained on behalf of the corporation. A case instituted by a corporation without authority from its board of directors is subject to dismissal on the ground of failure to state a cause of action.

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[71] *Cua, Jr., et al. v. Tan, et al.*, 622 Phil. 661, 715-716 (2009), citing I Jose C. Campos & Ma. Clara Lopez-Campos, THE CORPORATION CODE: COMMENTS, NOTES, AND SELECTED CASES 819-820 (1990). Emphasis and underlining supplied.

[72] G.R. Nos. 210906 & 211203, October 16, 2019.

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In certain instances, however, the stockholders may sue on behalf of the corporation

As an exception to the foregoing rule, jurisprudence has recognized certain instances when minority stockholders may bring suits on behalf of corporations. Where the board of directors itself is a party to the wrong, either because it is the author thereof or because it refuses to take remedial action, equity permits individual stockholders to seek redress. These actions have come to be known as derivative suits. In Chua v. Court of Appeals, the Court defined a derivative suit as "a suit by a shareholder to enforce a corporate cause of action."

In derivative suits, it is the corporation that is the victim of the wrong. As such, it is the corporation that is properly regarded as the real party in interest, while the relator-stockholder is merely a nominal party. The corporation must be impleaded so that the benefits of the suit accrue to it and also because it must be barred from bringing a subsequent case against the same defendants for the same cause of action. Stated otherwise, the judgment rendered in the suit must constitute res judicata against the corporation, even though it refuses to sue through its board of directors.

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The right of stockholders to bring derivative suits is not based on any provision of the Corporation Code or the Securities Regulation Code, but is a right that is implied by the fiduciary duties that directors owe corporations and stockholders. Derivative suits are, therefore, grounded not on law, but on equity.[73]

Jurisprudence has developed three requisites for a derivative suit, which are first enumerated together in the 1989 case of *San Miguel Corporation v. Kahn*:[74]

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;

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[73] Id. Citations omitted.

[74] 257 Phil. 459 (1989).

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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;

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.[75]

This is the three-part test insisted upon by Metrobank; however, this test has been superseded by Rule 8, Section 1 of the 2001 IRPIC, which obliquely defines a derivative suit, or a derivative action, as an action brought by a stockholder or member in the name of a corporation or association.[76] That same provision states that such actions may be brought, provided that the following requisites, which must be specifically alleged in the complaint,[77] are met:

(1) The party suing on the corporation or association's behalf was a stockholder or member at the time the acts or transactions subject of the action occurred and at the time the action was filed;

(2) Such party exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires;

(3) No appraisal rights are available for the act or acts complained of; and

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

(5) The suit must be brought in the name of the corporation.[78]

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[75] Id. at 470. Citations omitted. These requisites are derived from earlier jurisprudence. See citations in the original reported text. See also I Jose C. Campos & Ma. Clara Lopez-Campos, supra note 71 at 820-821.

[76] *Villamor, Jr. v. Umale*, 744 Phil. 31, 46-47 (2014).

[77] *Forest Hills Golf and Country Club, Inc. v. Fil-Estate Properties, Inc., et al.*, 790 Phil. 729, 743-744 (2016).

[78] The bringing of the suit in the corporation's name is a requisite for a derivative suit which is implicit from the first sentence of Rule 8, Section 1 of the 2001 IRPIC. *Villamor, Jr. v. Umale*, supra note 76. The corporation is an indispensable party in a derivative suit. *Cua, Jr., et al. v. Tan, et al.*, supra note 71 at 688. Thus, any judgment rendered without impleading the corporation is null and void. See *Guy, et al. v. Guy*, 694 Phil. 354 (2012).

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III.

Prior to the enactment of the SEC Reorganization Decree in 1976, jurisdiction over derivative suits was lodged with the courts of general jurisdiction.[79]

With the advent of the SEC Reorganization Decree, jurisprudence has resorted to Section 5 thereof to allocate jurisdiction between the SEC and the regular courts. The application of Section 5 was eventually standardized into a **two-tier test** which has been applied to all kinds of stockholder suits, whether individual, class, or derivative.[80] The two "tiers" are actually two separate tests: the first test assesses the **relationship** of the parties of the case to one another,[81] and the second test assesses **nature of the controversy** among the parties:[82]

> To determine whether a case involves an intra-corporate controversy, x x x two elements must concur: (a) the status or relationship of the parties; and (2) the nature of the question that is the subject of their controversy.
>
> The first element requires that the controversy must arise out of intra-corporate or partnership relations between any or all of the parties and the corporation, partnership or association of which they are stockholders, members or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the State insofar as it concerns their individual franchises. The second element requires that the dispute among the parties be intrinsically connected with the regulation of the corporation.

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[79] See REPUBLIC ACT NO. 296, Sections 44 & 86, in relation to the following cases: *Gamboa v. Victoriano*, 179 Phil. 36, 42-43 (1979); *Republic Bank v. Cuaderno, et al.*, 125 Phil. 1076, 1083 (1967); *Evangelista v. Santos*, 86 Phil. 387, 395 (1950); *Everett v. Asia Banking Corporation, et al.*, 49 Phil. 512, 527 (1926); and *Pascual v. Del Saz Orozco*, 19 Phil. 82, 95-96 (1911).

[80] See *Lisam Enterprises, Inc., et al. v. Banco de Oro Unibank, Inc., et al.*, 686 Phil. 293 (2012); *Saura v. Saura, Jr.*, 372 Phil. 337 (1999); *Union Glass & Container Corp., et al. v. SEC, et al.,* 211 Phil. 222 (1983).

[81] SEC REORGANIZATION DECREE, Section 5, Paragraph (b).

[82] Id., id., Paragraphs (a) and (c). See *Ku v. RCBC Securities, Inc.*, G.R. No. 219491, October 17, 2018, citing *Medical Plaza Makati Condominium Corp. v. Cullen*, 720 Phil. 732, 742-743 (2013).

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If the nature of the controversy involves matters that are purely civil in character, necessarily, the case does not involve an intra-corporate controversy.[83]

The two-tier test ensures that cases involving corporations but do **not** involve *actual intra-corporate disputes* are filtered out:

[I]n the 1984 case of *DMRC Enterprises v. Este del Sol Mountain Reserve, Inc.*, the Court introduced the nature of the controversy test. We declared in this case that it is not the mere existence of an intra-corporate relationship that gives rise to an intra-corporate controversy; to rely on the relationship test alone will divest the regular courts of their jurisdiction for the sole reason that the dispute involves a corporation, its directors, officers, or stockholders. We saw that there is no legal sense in disregarding or minimizing the value of the nature of the transactions which gives rise to the dispute.

Under the nature of the controversy test, the incidents of that relationship must also be considered for the purpose of ascertaining whether the controversy itself is intra-corporate. The controversy must not only be rooted in the existence of an intra-corporate relationship, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation. If the relationship and its incidents are merely incidental to the controversy or if there will still be conflict even if the relationship does not exist, then no intra-corporate controversy exists.[84]

Subsequent decisions further hold that the following relationships are considered intra-corporate: (1) those between the corporation, partnership or association and the public; (2) those between the corporation, partnership or association and the State insofar as its franchise, permit or license to operate is concerned; (3) those between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) those among the stockholders, partners or associates

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[83] *Speed Distributing Corp. v. Court of Appeals*, 469 Phil. 739, 758-759 (2004). Citations omitted.

[84] *Reyes v. Hon. RTC of Makati, Branch 142, et al.*, 583 Phil. 591, 608 (2008). Citations omitted.

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themselves.[85] Likewise, a controversy is intra-corporate in nature if it involves the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation.[86]

Thus, under the regime of the SEC Reorganization Decree, it appears that derivative suits which satisfy the two-tier test must be tried by the SEC, while those that do not must be tried by the regular courts.[87] This view is manifested in the 2012 case of *Lisam Enterprises v. Banco de Oro Unibank (Lisam)*,[88] which, like the present case, also involved a derivative suit for annulment of mortgage filed by a shareholder against the president and the treasurer of the corporation, as well as the mortgagee bank. The bank filed a motion to dismiss, claiming the stockholder's lack of legal capacity to sue, failure to state a cause of action, and *litis pendentia*. The trial court granted the motion to dismiss and denied the stockholder's motion to amend the complaint to include an allegation that she tried to exhaust intra-corporate remedies. We allowed the stockholder to resort directly to the Supreme Court to resolve pure questions of law, and reversed the trial court, *viz.*:

> With the amendment stating "that plaintiff Lolita A. Soriano likewise made demands upon the Board of Directors of Lisam Enterprises, Inc., to make legal steps to protect the interest of the corporation from said fraudulent transaction, but unfortunately, until now, no such legal step was ever taken by the Board, hence, this action for the benefit and in behalf of the corporation," does the amended complaint now sufficiently state a cause of action? In *Hi-Yield Realty, Incorporated v. Court of Appeals*, the Court enumerated the requisites for filing a derivative suit, as follows:
>
> a) the party bringing the 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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[85] *PHILCOMSAT Corp., et al. v. Sandiganbayan 5th Division, et al.*, 760 Phil. 893, 905 (2015).

[86] *San Jose, et al. v. Ozamiz*, 813 Phil. 669, 679 (2017).

[87] See *Imperial, et al. v. Judge Armes, et al.*, 804 Phil. 439, 470 (2017), and cases cited therein.

[88] Supra note 80.

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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.

A reading of the amended complaint will reveal that all the foregoing requisites had been alleged therein. Hence, the amended complaint remedied the defect in the original complaint and now sufficiently states a cause of action.

Respondent PCIB should not complain that admitting the amended complaint after they pointed out a defect in the original complaint would be unfair to them. They should have been well aware that due to the changes made by the 1997 Rules of Civil Procedure, amendments may now substantially alter the cause of action or defense. It should not have been a surprise to them that petitioners would redress the defect in the original complaint by substantially amending the same, which course of action is now allowed under the new rules.

The next question then is, upon admission of the amended complaint, would it still be proper for the trial court to dismiss the complaint? The Court answers in the negative.

Saura v. Saura, Jr. is closely analogous to the present case. In *Saura*, the petitioners therein, stockholders of a corporation, sold a disputed real property owned by the corporation, despite the existence of a case in the Securities and Exchange Commission (SEC) between stockholders for annulment of subscription, recovery of corporate assets and funds, etc. The sale was done without the knowledge of the other stockholders, thus, said stockholders filed a separate case for annulment of sale, declaration of nullity of deed of exchange, recovery of possession, etc., against the stockholders who took part in the sale, and the buyer of the property, filing said case with the regular court (RTC). Petitioners therein also filed a motion to dismiss the complaint for annulment of sale filed with the RTC, on the ground of forum shopping, lack of jurisdiction, lack of cause of action, and litis pendentia among others. The Court held that the complaint for annulment of sale was properly filed with the regular court, because the buyer of the property had no intra-corporate relationship with the stockholders, hence, the buyer could not be joined as party-defendant in the SEC case. To include said buyer as a party-defendant in the case pending with the SEC would violate the then existing rule on

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jurisdiction over intra-corporate disputes. The Court also struck down the argument that there was forum shopping, ruling that the issue of recovery of corporate assets and funds pending with the SEC is a totally different issue from the issue of the validity of the sale, so a decision in the SEC case would not amount to res judicata in the case before the regular court. Thus, the Court merely ordered the suspension of the proceedings before the RTC until the final outcome of the SEC case.

The foregoing pronouncements of the Court are exactly in point with the issues in the present case. Here, the complaint is for annulment of mortgage with the mortgagee bank as one of the defendants, thus, as held in *Saura*, jurisdiction over said complaint is lodged with the regular courts because the mortgagee bank has no intra-corporate relationship with the stockholders. There can also be no forum shopping, because there is no identity of issues. **The issue being threshed out in the SEC case is the due execution, authenticity or validity of board resolutions and other documents used to facilitate the execution of the mortgage, while the issue in the case filed by petitioners with the RTC is the validity of the mortgage itself executed between the bank and the corporation, purportedly represented by the spouses Leandro and Lilian Soriano, the President and Treasurer of petitioner LEI, respectively. Thus, there is no reason to dismiss the complaint in this case.**[89]

Obviously, *Lisam* relies heavily on the earlier ruling in *Saura v. Saura, Jr. (Saura)*,[90] which was decided prior to the transfer of jurisdiction over intra-corporate controversies from the SEC to the courts. One of the reasons put forth by the *Saura* court in making a distinction between derivative suits cognizable by the SEC and derivative suits cognizable by the regular courts is that the SEC is a specialized administrative agency which has jurisdiction over intra-corporate disputes but not over actions to annul mortgages or sales:

"It is true that the trend is towards vesting administrative bodies like the SEC with the power to adjudicate matters coming under their particular specialization, to insure a more knowledgeable solution of the problems submitted to them. This would also relieve the regular courts of a substantial number of cases that would otherwise swell their already

[89] Id. at 305.

[90] Supra note 80.

clogged dockets. But as expedient as this policy may be, it should not deprive the courts of justice of their power to decide ordinary cases in accordance with the general laws that do not require any particular expertise or training to interpret and apply. Otherwise, the creeping take-over by the administrative agencies of the judicial power vested in the courts would render the judiciary virtually impotent in the discharge of the duties assigned to it by the Constitution."

Since Sandalwood has no intra-corporate relationship with the respondents, it cannot be joined as party-defendant in the SEC case as to do so would violate the rule on jurisdiction. Therefore, respondents' complaint against Sandalwood for the annulment of the sale of realty was properly filed before the regular court. This action must await the final ruling of the issue raised in SEC Case No. 2968, questioning the validity of the deed of exchange, the resolution of which is a logical antecedent of the issue involved in the civil action against Sandalwood. Thus, respondents' complaint for annulment of sale can only succeed if final judgment is rendered in SEC Case No. 2968, annulling the deed of exchange executed in favor of VGFI.[91]

IV.

Upon the transfer of the SEC's jurisdiction over intra-corporate disputes pursuant to Section 5.2 of the SRC and the 2001 IRPIC, the distinction between "intra-corporate" and "non-intra-corporate" derivative suits was obliterated; and jurisdiction over **all** derivative suits was returned to the trial courts.

Relative thereto, we have already mentioned that the 2001 IRPIC was intended to serve as the procedural regime to govern the cases defined in Section 5 of the SEC Reorganization Decree, Thus, the express inclusion of derivative suits in the classes of cases governed by the 2001 IRPIC implies that all derivative suits must now be tried by the special commercial courts. This conclusion is further bolstered by an examination of the concept and nature of a derivative suit. Since a derivative suit is an equity-based procedural device which allows an unauthorized person to sue on behalf of a corporation in order to remedy official or directorial mismanagement, the *very act of instituting*

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[91] Id. at 348-349. *Contra*, Aquino, *J.*, dissenting in *Union Glass & Container Corp., et al. v. SEC, et al.,* supra note 80.

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a derivative suit implies the existence of an intra-corporate dispute, regardless of the relief sought by such suit or the parties impleaded therein. Couched in the language of Section 5(b) of the SEC Reorganization Decree, the **mere resort** to a derivative suit implies the existence of a "controvers[y] arising out of **intra-corporate** x x x **relations, between and among stockholders [or] members**; **between any or all of them and the corporation** x x x **or association of which they are stockholders [or] members**." In the case of a derivative suit, this would normally entail a dispute between an individual stockholder or a group of stockholders, against the directors, the officers, or the majority stockholders.

This view is based not only on the text of the statute but also on jurisprudence. In an *obiter dictum* in the 1997 case of *Western Institute of Technology, Inc. v. Salas*, the Court expressly acknowledged that a derivative suit is an intra-corporate dispute as defined in Section 5(b) of the SEC Reorganization Decree.[92] This *obiter dictum* became doctrine in *Forest Hills Golf and Country Club, Inc. v. Fil-Estate Properties, Inc.*,[93] where we rejected the suing shareholder's argument that the case, while admittedly a derivative suit, did not involve an intra-corporate dispute because he was suing the other shareholders not in their capacity as shareholders but as third-party developers of a property owned by the corporation, *viz.*:

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

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[92] 343 Phil. 742, 754 (1997).

[93] Supra note 77.

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of petitioner FHGCCI, which it later assigned to respondent FEGDI. Considering these allegations, we find that, contrary to the claim of petitioner FHGCCI, there are unavoidably intra-corporate controversies intertwined in the specific performance case.

Moreover, a derivative suit is a remedy designed by equity as a principal defense of the minority shareholders against the abuses of the majority. Under the Corporation Code, the corporation's power to sue is lodged with its board of directors or trustees. However, when its officials refuse to sue, or are the ones to be sued, or hold control of the corporation, an individual stockholder may be permitted to institute a derivative suit to enforce a corporate cause of action on behalf of a corporation in order to protect or vindicate its rights. In such actions, the corporation is the real party in interest, while the stockholder suing on behalf of the corporation is only a nominal party. Considering its purpose, **a derivative suit, therefore, would necessarily touch upon the internal affairs of a corporation**. It is for this reason that a derivative suit is among the cases covered by the Interim Rules of Procedure Governing Intra-Corporate Controversies, A.M. No. 01-2-04-SC, March 13, 2001.[94]

V.

The cognizability of derivative suits by the special commercial courts is further bolstered by the 2015 case of *Gonzales, et al. v. GJH Land, Inc., et al. (Gonzales)*,[95] where the Court *En Banc* laid down the following guidelines:

1. If a commercial case filed before the proper RTC is wrongly raffled to its regular branch, the proper courses of action are as follows:

    1.1 If the RTC has only one branch designated as a Special Commercial Court, then the case shall be referred to the Executive Judge for re-docketing as a commercial case, and thereafter, assigned to the sole special branch;

    1.2 If the RTC has multiple branches designated as Special Commercial Courts, then the case shall be referred to the Executive Judge for re-docketing as a commercial case, and thereafter, raffled off among those special branches; and

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[94] Id. at 741-742. Citations omitted, emphasis and underlining supplied.

[95] 772 Phil. 483 (2015).

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> 1.3 If the RTC has no internal branch designated as a Special Commercial Court, then the case shall be referred to the nearest RTC with a designated Special Commercial Court branch within the judicial region. Upon referral, the RTC to which the case was referred to should re-docket the case as a commercial case, and then: (a) if the said RTC has only one branch designated as a Special Commercial Court, assign the case to the sole special branch; or (b) if the said RTC has multiple branches designated as Special Commercial Courts, raffle off the case among those special branches.
>
> 2. If an ordinary civil case filed before the proper RTC is wrongly raffled to its branch designated as a Special Commercial Court, then the case shall be referred to the Executive Judge for re-docketing as an ordinary civil case. Thereafter, it shall be raffled off to all courts of the same RTC (including its designated special branches which, by statute, are equally capable of exercising general jurisdiction same as regular branches), as provided for under existing rules.[96]

The *Gonzales* guidelines are based on the Court *En Banc's* ruling therein that the transfer of jurisdiction effected by Section 5.2 of the SRC was directed at *"the courts of general jurisdiction,"* that is, to the RTCs in general, rather than to the special commercial courts alone. In authorizing the Supreme Court to designate special commercial courts, the statute did not delegate the power to define subject matter jurisdiction; rather, it authorized the Supreme Court to designate the **specific branches of the RTCs** which will **exercise the jurisdiction** that has been vested in the RTCs in general.[97] This interpretation supersedes previous rulings which mandated the dismissal of intra-corporate cases that were mistakenly filed with the regular RTCs.[98] Under the current rules, mistakenly filed intra-corporate cases and non-intra-corporate cases can now be shuttled to the proper RTC.

Given that jurisdiction over both derivative suits and intra-corporate controversies has now been essentially coalesced with the RTCs, the objection interposed in *Saura* and *Lisam* with

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[96] Id. at 518-519.

[97] Id. at 506.

[98] See *Calleja v. Panday*, 518 Phil. 801, 809 (2006).

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respect to the SEC's lack of competence and jurisdiction over non-corporate issues that may be implicated in a derivative suit, or over parties without any relation to the corporation, has already been obviated. In *Concorde Condominium, Inc. v. Baculio*,[99] we ruled that special commercial courts are still considered courts of general jurisdiction, and are therefore empowered not only to hear and decide cases under its general jurisdiction, but also to assume jurisdiction over parties unrelated to the corporation.[100]

Furthermore, splitting the exercise of jurisdiction over cases governed by the 2001 IRPIC between the regular courts and the special commercial courts, as the assailed CA decision decrees, could lead to confusion and case management problems. For the sake of uniformity and efficiency in judicial administration, it is imperative that all cases governed by the 2001 IRPIC, derivative suits included, be tried by the special commercial courts.

VI.

Applying the foregoing disquisitions to the case at bar, we find that while SARC's suit is indeed a derivative suit which is transferable to the relevant special commercial court in accordance with the *Gonzales* guidelines, it nevertheless suffers from fatal defects which merit its dismissal.

SARC's petition expressly alleges that it is being filed as a derivative suit:

> 6. This is a **stockholder's derivative suit** instituted by PETITIONERS RAMON A. SALAZAR, JR., ROGER A. SALAZAR, ROBERT A. SALAZAR and ROSEMARIE S. FERNANDEZ for and in behalf of SALAZAR ANG REALTY CORPORATION (Plaintiff-corporation), as its incorporators and stockholders x x x. Said Petitioners were stockholders of the corporation at the time that: 1) a loan in the amount of EIGHTEEN MILLION FIVE HUNDRED THOUSAND PESOS was obtained from the Respondent Bank evidenced by a promissory note (Annex "B") allegedly signed by the late Consuelo Ang Salazar

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[99] 781 Phil. 174 (2016).

[100] See also *GD Express Worldwide N.V., et al. v. Court of Appeals (4th Div.), et al.*, 605 Phil. 406, 418-419 (2009).

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and Ralph Ang Salazar as representatives of Tacloban RAS Construction Corporation x x x; 2) the mortgage contract (Annex "C") in favor of the Respondent bank was allegedly executed by the corporation through the late Consuelo A. Salazar who was described as the corporation's President and its Secretary Ralph A. Salazar x x x;

x x x x

7. This suit is brought by the above[-]mentioned incorporators and stockholders for the following reasons:

x x x x

7.2. Ramon Ve. Salazar, director and Vice President of the Corporation died on March 30, 1995, before the mortgage contract which is sought to be declared null and void was executed. No document was filed with the SEC which shows that an election was held by the board of directors in order to fill the vacancy. Consuelo A. Salazar passed away last October 21, 2001. The remaining directors of the corporation have not taken any steps to vindicate the corporation's rights. Demand upon the board of directors to file suit in behalf of the corporation would be useless in that the mortgage contract, the validity of which is being questioned in this suit appeared to have been approved by said board through a supposed board resolution certified by the corporate secretary Ralph A. Salazar and the Secretary's Certificate of said resolution was annotated on the titles issued in the name of Salazar Ang Realty Corporation. This however, cannot be determined with certainty by the Petitioners stockholders as Ralph A. Salazar acting as the corporate secretary of Plaintiff Corporation has custody of the stock and transfer book as well as the resolutions and other documents and papers of the corporation.

7.3. Time is of the essence considering that corporate assets have now been registered in the name of the Respondent Bank and the exhaustion of remedies within the corporation which would delay the filing of a suit would only cause irreparable damage to the corporation.[101]

Apart from the express statement in paragraph 6, the rest of the petition's allegations clearly reveal that the crux of the dispute is the illegal and *ultra vires* approval of the mortgage by the SARC board without the consent of the suing shareholders, and despite the vacancies in the board created by the deaths of Ramon. Sr.

[101] *Rollo,* pp. 148-150. Underlining and emphasis supplied.

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and Consuelo. These allegations unmistakably show the existence of a "controversy arising out of intra-corporate relations," with the suing shareholders assailing the decisions of Ralph and the SARC board. The non-joinder of Ralph and the other officers or shareholders of SARC, or even of Tacloban RAS, is of no moment, because non-joinder of parties is not a ground for dismissal, and the court can order their inclusion at any time.[102] While the reliefs sought are directed at Metrobank and the officers who conducted the auction sale, the suing shareholders' cause of action is ultimately rooted in the illegal and improper ratification and authorization of the mortgage contract by Ralph and the SARC board.

Having established that the petition is a derivative suit, we determine its compliance with the requisites therefor under the 2001 IRPIC.

There is no question that the suit was brought in SARC's name by Ramon, et al., who were stockholders at the time the assailed mortgage contract was entered into. The petition also contains allegations justifying the non-exhaustion of intra-corporate remedies.[103] However, it does not comply with Rule 1, Section 1(3) of the 2001 IRPIC, regarding the availment of appraisal rights.

Among the grounds raised by SARC for the nullification of the mortgage contract is that it constitutes an encumbrance of substantially all the assets of the corporation which must be authorized by its stockholders in a meeting for that purpose, pursuant to Section 40 of the Corporation Code.[104] Under that

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[102] RULES OF COURT, Rule 3, Section 11; *Divinagracia v. Parilla, et al.*, 755 Phil. 783, 792 (2015); *Gamboa v. Victoriano*, 179 Phil. 36 (1979).

[103] Non-exhaustion of intra-corporate remedies is justified where demand upon the board to exercise the corporate power of suit is pointless, *e.g.,* when the defendants are in complete control of the corporation, or the acts complained of were ostensibly approved by a majority of shareholders despite proof of prejudice to the corporation. See *Ago Realty & Development Corp. v. Ago,* supra note 72; *Republic Bank v. Cuaderno, Evangelista v. Santos,* and *Everett v. Asia Banking Corp.,* supra note 79.

[104] Id. at 160-161.

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provision, a mortgage of all or substantially all of the corporation's assets is subject to the exercise of the appraisal right. It was therefore incumbent upon herein respondents to make particular allegations regarding their availment of their appraisal rights or the impossibility or futility thereof.[105] Under the 2001 IRPIC, a derivative suit must particularly allege that there are no appraisal rights available against the assailed corporate action.[106] Conversely, if appraisal rights are available, such fact must be alleged and the non-availment thereof must be properly explained, more so since a derivative suit must particularly allege that the stockholder exerted **all reasonable efforts to exhaust all remedies** available under the laws and regulations governing the corporation.[107]

Furthermore, SARC's petition lacks a categorical statement that it is not a nuisance or harassment suit. In order to provide legal justification for what is essentially an unauthorized suit filed on behalf of the corporation, stockholders who resort to the equitable remedy of a derivative suit must categorically declare under oath that the remedy is being sought for just and legitimate purposes and not as a form of nuisance or harassment.[108] This principle is now enshrined in Rule 8, Section 1 of the 2001 IRPIC, which explicitly states that nuisance or harassment suits shall be dismissed.[109]

To conclude, we reiterate that a derivative suit is an equitable exception to the rule that the corporate power of suit is exercisable only through the board of directors. A proper resort to this equitable procedural device must satisfy the requisites laid down by law and

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[105] *Cf. Villamor, Jr. v. Umale,* supra note 76 at 50.

[106] *Forest Hills Golf and Country Club, Inc. v. Fil-Estate Properties, Inc.,* supra note 77 at 741; *Spouses Yu, et al. v. Yukayguan, et al.*, 607 Phil. 581, 611 (2009).

[107] *Ching, et al. v. Subic Bay Golf and Country Club, Inc., et al.*, 742 Phil. 606, 614 (2014); *Spouses Yu, et al. v. Yukayguan,* id.

[108] *Spouses Yu, et al. v. Yukayguan,* id. at 611.

[109] See *Cua, Jr., et al. v. Tan, et al.,* supra note 71 at 722; *Spouses Yu, et al. v. Yukayguan,* id. at 612.

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procedure for its institution; thus, courts must deny resort when such requisites are not met.[110]

WHEREFORE, the present petition is **GRANTED**. The March 25, 2014 Decision and the May 8, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 05050 are hereby **REVERSED** and **SET ASIDE**. Civil Case No. 2001-11-164, entitled *Salazar Ang Realty Corporation, represented by Incorporators-Stockholders Ramon A. Salazar, Jr., Robert A. Salazar, Roger A. Salazar and Rosemarie Salazar-Fernandez, versus Metropolitan Bank & Trust Company, Ex Officio Sheriff Atty. Blanche Astilla Salino, Sheriff IV Luis G. Copuaco, and the Register of Deeds, Tacloban City*, is hereby **DISMISSED.**

SO ORDERED.

Gesmundo, C.J. (Chairperson), Caguioa, Inting, and *Dimaampao, JJ.,* concur.

APPEARANCES OF COUNSEL

Wee Lim & Salas Law Firm for petitioner.
Jose Fernandez for respondents.

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[110] *Forest Hills Golf and Country Club, Inc. v. Fil-Estate Properties, Inc.,* supra note 77 at 744; *Spouses Yu, et al. v. Yukayguan,* id. at 596, citing *Bitong v. Court of Appeals*, 354 Phil. 516, 545 (1998).