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SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Nachura, and *Reyes, JJ.*, concur.

SECOND DIVISION

[G.R. No. 165744. August 11, 2008]

OSCAR C. REYES, *petitioner, vs.* **HON. REGIONAL TRIAL COURT OF MAKATI, Branch 142, ZENITH INSURANCE CORPORATION, and RODRIGO C. REYES,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; SECURITIES AND EXCHANGE COMMISSION REORGANIZATION ACT (P.D. 902-A); JURISDICTION OF REGIONAL TRIAL COURTS ACTING AS SPECIAL COMMERCIAL COURTS; CHARGES OF FRAUD AGAINST PETITIONER NOT PROPERLY SUPPORTED BY THE REQUIRED FACTUAL ALLEGATIONS.— The rule is that a complaint must contain a plain, concise, and direct statement of the ultimate facts constituting the plaintiff's cause of action and must specify the relief sought. Section 5, Rule 8 of the Revised Rules of Court provides that **in all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularly**. These rules find specific application to Section 5(a) of P.D. No. 902-A which speaks of corporate devices or scheme that amount to fraud or misrepresentation detrimental to the public and/or to the stockholders. Allegations of deceit, machination, false pretenses, misrepresentation, and threats are largely conclusions of law that, without supporting statements of the facts to which the allegations of fraud refer, do not sufficiently state an effective cause of action. The late

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Justice Jose Feria, a noted authority in Remedial Law, declared that fraud and mistake are required to be averred with particularity in order to enable the opposing party to controvert the particular facts allegedly constituting such fraud or mistake. Tested against these standards, we find that the charges of fraud against Oscar were not properly supported by the required factual allegations. While the complaint contained allegations of fraud purportedly committed by him, these allegations of fraud purportedly committed by him, these allegations are not particular enough to bring the controversy within the special commercial court's jurisdiction; they are not statements of ultimate facts, but are mere conclusions of law: how and why the alleged appropriation of shares can be characterized as "illegal and fraudulent" were not explained nor elaborated on.

2. ID.; ID.; ID.; FRAUDULENT DEVICES AND SCHEME; THERE MUST BE SUFFICIENT NEXUS SHOWING THAT THE CORPORATION'S NATURE, STRUCTURE OR POWERS WERE USED TO FACILITATE THE FRAUDULENT DEVICE OR SCHEME; THE COMPLAINT MUST SHOW ON ITS FACE WHAT ARE CLAIMED TO BE FRAUDULENT CORPORATE ACTS IF THE COMPLAINANT WISHES TO INVOKE THE COURT'S SPECIAL JURISDICTION.— Not every allegation of fraud done in a corporate setting or perpetrated by corporate officers will bring the case within the special commercial court's jurisdiction. To fall within this jurisdiction, there must be sufficient nexus showing that the corporation's nature, structure, or powers were used to facilitate the fraudulent device or scheme. Contrary to this concept, the complaint presented a reverse situation. No corporate power or office was alleged to have facilitated the transfer of the shares; rather, Oscar, as an individual and without reference to his corporate personality, was alleged to have transferred the shares of Anastacia to his name, allowing him to become the majority and controlling stockholder of Zenith, and eventually, the corporation's President. In ordinary cases, the failure to specifically allege the fraudulent acts does not constitute a ground for dismissal since such defect can be cured by a bill of particulars. In cases governed by the Interim Rules of Procedure on Intra-Corporate Controversies, however, a bill of particulars is a prohibited pleading. It is essential, therefore, for the complaint to show on its face what are claimed to be the fraudulent corporate

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acts if the complainant wishes to invoke the court's special commercial jurisdiction. We note that twice in the course of this case, Rodrigo had been given the opportunity to study the propriety of amending or withdrawing the complaint, but he consistently refused. The court's function in resolving issues of jurisdiction is limited to the review of the allegations of the complaint and, on the basis of these allegations, to the determination of whether they are of such nature and subject that they fall within the terms of the law defining the court's jurisdiction. Regretfully, we cannot read into the complaint any specifically alleged corporate fraud that will call for the exercise of the court's special commercial jurisdiction. Thus, we cannot affirm the RTC's assumption of jurisdiction over Rodrigo's complaint on the basis of Section 5(a) of P.D. No. 902-A.

3. ID.; ID.; ID.; INTRA-CORPORATE CONTROVERSY; TYPES OF INTRA-CORPORATE RELATIONS THE EXISTENCE OF WHICH IS SUFFICIENT TO CONFER JURISDICTION TO THE SECURITIES AND EXCHANGE COMMISSION REGARDLESS OF THE SUBJECT MATTER OF THE DISPUTE.— In the 1984 case of *DMRC Enterprises v. Esta 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.

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4. ID.; ID.; ID.; "TWO-TIER TEST"; JURISDICTION SHOULD BE DETERMINED BY CONSIDERING NOT ONLY THE STATUS OR RELATIONSHIP OF THE PARTIES BUT ALSO THE NATURE OF THE QUESTION UNDER CONTROVERSY.— The Court then combined the two tests and declared that jurisdiction should be determined by considering not only the status or relationship of the parties, but also the nature of the question under controversy. This two-tier test was adopted in the recent case of *Speed Distribution, Inc. v. Court of Appeals*. To determine whether a case involves an intra-corporate controversy, and is to be heard and decided by the branches of the RTC specifically designated by the Court to try and decide such cases, 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. If the nature of the controversy involves matters that are purely civil in character, necessarily, the case does not involve an intra-corporate controversy. Given these standards, we now tackle the question posed for our determination under the specific circumstances of this case:

5. ID.; ID.; ID.; RESPONDENT'S COMPLAINT FAILS THE "RELATIONSHIP TEST" CONSIDERING THAT HE IS NOT A STOCKHOLDER OF THE CORPORATION; REASONS.— Rodrigo must hurdle two obstacles before he can be considered a stockholder of Zenith with respect to the shareholdings originally belonging to Anastacia. *First*, he must prove that there are shareholdings that will be left to him and his co-heirs, and this can be determined only in a settlement of the decedent's estate. No such proceeding has been commenced to date. *Second*, he must register the transfer of

the shares allotted to him to make it binding against the corporation. He cannot demand that this be done unless and until he has established his specific allotment (and *prima facie* ownership) of the shares. Without the settlement of Anastacia's estate, there can be no definite partition and distribution of the estate to the heirs. Without the partition and distribution, there can be no registration of the transfer. And without the registration, we cannot consider the transferee-heir a stockholder who may invoke the existence of an intra-corporate relationship as premise for an intra-corporate controversy within the jurisdiction of a special commercial court. In sum, we find that — insofar as the subject shares of stock (*i.e.*, Anastacia's shares) are concerned — Rodrigo cannot be considered a stockholder of Zenith. Consequently, we cannot declare that an intra-corporate relationship exists that would serve as basis to bring this case within the special commercial court's jurisdiction under Section 5(b) of PD 902-A, as amended. Rodrigo's complaint, therefore, fails the relationship test.

6. ID.; ID.; ID.; NATURE OF THE PRESENT CONTROVERSY WHICH IS THE DETERMINATION AND DISTRIBUTION OF SUCCESSIONAL RIGHTS IS NOT ONE OF WHICH MAY BE CLASSIFIED AS AN INTRA-CORPORATE DISPUTE AND IS BEYOND THE JURISDICTION OF THE SPECIAL COMMERCIAL COURT.— More than the matters of injury and redress, what Rodrigo clearly aims to accomplish through his allegations of illegal acquisition by Oscar is the distribution of Anastacia's shareholdings without a prior settlement of her estate — an objective that, by law and established jurisprudence, cannot be done. The RTC of Makati, acting as a special commercial court, has no jurisdiction to settle, partition, and distribute the estate of a deceased. A relevant provision — Section 2 of Rule 90 of the Revised Rules of Court — that contemplates properties of the decedent held by one of the heirs declares: **Questions as to advancement** made or alleged to have been made by the deceased to any heir **may be heard and determined by the court having jurisdiction of the estate proceedings**; and the final order of the court thereon shall be binding on the person raising the questions and on the heir. Worth noting are this Court's statements in the case of *Natcher v. Court of Appeals:* **Matters which involve settlement and distribution of the estate of the**

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decedent fall within the exclusive province of the probate court in the exercise of its limited jurisdiction. x x x It is clear that trial **courts trying an ordinary action cannot resolve to perform acts pertaining to a special proceeding** because it is subject to specific prescribed rules. That an accounting of the funds and assets of Zenith to determine the extent and value of Anastacia's shareholdings will be undertaken by a probate court and not by a special commercial court is completely consistent with the probate court's limited jurisdiction. It has the power to enforce an accounting as a necessary means to its authority to determine the properties included in the inventory of the estate to be administered, divided up, and distributed. Beyond this, the determination of title or ownership over the subject shares (whether belonging to Anastacia or Oscar) may be *conclusively settled* by the probate court as a question of collation or advancement. We had occasion to recognize the court's authority to act on questions of title or ownership in a collation or advancement situation in *Coca v. Pangilinan* where we ruled: xxx **Although generally, a probate court may not decide a question of title or ownership, yet if** the interested parties are all heirs, or **the question is one of collation or advancement**, or the parties consent to the assumption of jurisdiction by the probate court and the rights of third parties are not impaired, **the probate court is competent to decide the question of ownership**. In sum, we hold that the *nature* of the present controversy is not one which may be classified as an intra-corporate dispute and is beyond the jurisdiction of the special commercial court to resolve. In short, Rodrigo's complaint also fails the nature of the controversy test.

7. ID.; CORPORATIONS; DERIVATIVE SUIT; ALLEGATIONS OF THE PRESENT COMPLAINT DOES NOT AMOUNT TO A DERIVATIVE SUIT; NO INJURY, ACTUAL OR THREATENED, ALLEGED TO HAVE BEEN DONE TO THE CORPORATION DUE TO PETITIONER'S ACT.— Rodrigo's bare claim that the complaint is a derivative suit will not suffice to confer jurisdiction on the RTC (as a special commercial court) if he cannot comply with the requisites for the existence of a derivative suit. These requisites are: a. the party bringing suit should be a shareholder during the time of the act or transaction complained of, the number of shares not being material; b. the party 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. Based on these standards, we hold that the allegations of the present complaint do not amount to a derivative suit. *First*, as already discussed above, Rodrigo is not a shareholder with respect to the shareholdings originally belonging to Anastacia; he only stands as transferee-heir whose rights to the share are inchoate and unrecorded. With respect to his own individually-held shareholdings, Rodrigo has not alleged any individual cause or basis as a shareholder on record to proceed against Oscar. *Second*, in order that a stockholder may show a right to sue on behalf of the corporation, he must allege with some particularity in his complaint that he has exhausted his remedies *within the corporation* by making a sufficient demand upon the directors or other officers for appropriate relief with the expressed intent to sue if relief is denied. Paragraph 8 of the complaint hardly satisfies this requirement since what the rule contemplates is the exhaustion of remedies *within* the corporate setting: 8. As members of the same family, complainant Rodrigo C. Reyes has resorted [to] and exhausted all legal means of resolving the dispute with the end view of amicably settling the case, but the dispute between them ensued. *Lastly*, we find no injury, actual or threatened, alleged to have been done to the corporation due to Oscar's acts. If indeed he illegally and fraudulently transferred Anastacia's shares in his own name, then the damage is not to the corporation but to his co-heirs; the wrongful transfer did not affect the capital stock or the assets of Zenith. As already mentioned, neither has Rodrigo alleged any particular cause or wrongdoing against the corporation that he can champion in his capacity as a shareholder on record. In summary, whether as an individual or as a derivative suit, the RTC — sitting as special commercial court — has no jurisdiction to hear Rodrigo's complaint since what is involved is the determination and distribution of successional rights to the shareholdings of Anastacia Reyes. Rodrigo's proper remedy, under the circumstances, is to institute a special proceeding for the settlement of the estate of the deceased Anastacia Reyes, a move that is not foreclosed by the dismissal of his present complaint.

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APPEARANCES OF COUNSEL

Santos Parungao Aquino & Santos Law Offices and *Benjamin C. Santos & Ray Montri C. Santos Law Offices* for petitioner.
Job B. Madayag for private respondents.

D E C I S I O N

BRION, *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks to set aside the Decision of the Court of Appeals (*CA)*[1] promulgated on May 26, 2004 in CA-G.R. SP No. 74970. The CA Decision affirmed the Order of the Regional Trial Court (*RTC*), Branch 142, Makati City dated November 29, 2002[2] in Civil Case No. 00-1553 (entitled "Accounting of All Corporate Funds and Assets, and Damages") which denied petitioner Oscar C. Reyes' (*Oscar*) Motion to Declare Complaint as Nuisance or Harassment Suit.

BACKGROUND FACTS

Oscar and private respondent Rodrigo C. Reyes (*Rodrigo*) are two of the four children of the spouses Pedro and Anastacia Reyes. Pedro, Anastacia, Oscar, and Rodrigo each owned shares of stock of Zenith Insurance Corporation (*Zenith*), a domestic corporation established by their family. Pedro died in 1964, while Anastacia died in 1993. Although Pedro's estate was judicially partitioned among his heirs sometime in the 1970s, no similar settlement and partition appear to have been made with Anastacia's estate, which included her shareholdings in Zenith. As of June 30, 1990, Anastacia owned 136,598 shares of Zenith; Oscar and Rodrigo owned 8,715,637 and 4,250 shares, respectively.[3]

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[1] Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justice Romeo A. Brawner (deceased) and Associate Justice Aurora Santiago-Lagman, concurring; *rollo,* pp. 55-60.

[2] Quoted in full in Petition, *id.*, p. 18.

[3] *Id.,* p. 64.

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On May 9, 2000, Zenith and Rodrigo filed a complaint[4] with the Securities and Exchange Commission (*SEC*) against Oscar, docketed as SEC Case No. 05-00-6615. The complaint stated that it is *"a derivative suit initiated and filed by the complainant Rodrigo C. Reyes* ***to obtain an accounting of the funds and assets of ZENITH*** *INSURANCE CORPORATION which are now or formerly in the control, custody, and/or possession of respondent [herein petitioner Oscar] and* ***to determine the shares of stock of deceased spouses Pedro and Anastacia Reyes*** *that were arbitrarily and fraudulently appropriated [by Oscar] for himself [and] which were not collated and taken into account in the partition, distribution, and/or settlement of the estate of the deceased spouses, for which he should be ordered to account for all the income from the time he took these shares of stock, and should now deliver to his brothers and sisters their just and respective shares."*[5] [Emphasis supplied.]

In his Answer with Counterclaim,[6] Oscar denied the charge that he illegally acquired the shares of Anastacia Reyes. He asserted, as a defense, that he purchased the subject shares with his own funds from the unissued stocks of Zenith, and that the suit is not a *bona fide* derivative suit because the requisites therefor have not been complied with. He thus questioned the SEC's jurisdiction to entertain the complaint because it pertains to the settlement of the estate of Anastacia Reyes.

When Republic Act (*R.A.*) No. 8799[7] took effect, the SEC's exclusive and original jurisdiction over cases enumerated in Section 5 of Presidential Decree (*P.D.*) No. 902-A was

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[4] *Id.,* pp. 63-74.

[5] *Id.,* p. 65.

[6] *Id.,* pp. 92-115.

[7] Section 5.2 thereof states: The Commission's jurisdiction over all cases enumerated under Section 5 of P.D. 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 these cases. x x x.

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transferred to the RTC designated as a special commercial court.[8] The records of Rodrigo's SEC case were thus turned over to the RTC, Branch 142, Makati, and docketed as Civil Case No. 00-1553.

On October 22, 2002, Oscar filed a Motion to Declare Complaint as Nuisance or Harassment Suit.[9] He claimed that the complaint is a mere nuisance or harassment suit and should, according to the Interim Rules of Procedure for Intra-Corporate Controversies, be dismissed; and that it is not a *bona fide* derivative suit as it partakes of the nature of a petition for the settlement of estate of the deceased Anastacia that is outside the jurisdiction of a special commercial court. The RTC, in its Order dated November 29, 2002 (*RTC Order*), denied the motion in part and declared:

> A close reading of the Complaint disclosed the presence of two (2) causes of action, namely: a) a derivative suit for accounting of the funds and assets of the corporation which are in the control, custody, and/or possession of the respondent [herein petitioner Oscar] with prayer to appoint a management committee; and b) an action for determination of the shares of stock of deceased spouses Pedro and Anastacia Reyes allegedly taken by respondent, its accounting and the corresponding delivery of these shares to the parties' brothers and sisters. The latter is not a derivative suit and should properly be threshed out in a petition for settlement of estate.
>
> Accordingly, the motion is denied. However, only the derivative suit consisting of the first cause of action will be taken cognizance of by this Court.[10]

Oscar thereupon went to the CA on a petition for *certiorari*, prohibition, and *mandamus*[11] and prayed that the RTC Order be annulled and set aside and that the trial court be prohibited from continuing with the proceedings. The appellate court

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[8] Per A.M. No. 00-11-03 SC dated November 21, 2000.

[9] *Rollo*, pp. 119-132.

[10] *Supra* note 2.

[11] Under Rule 65 of the Revised Rules of Court, *rollo*, pp. 11-49.

affirmed the RTC Order and denied the petition in its Decision dated May 26, 2004. It likewise denied Oscar's motion for reconsideration in a Resolution dated October 21, 2004.

Petitioner now comes before us on appeal through a petition for review on *certiorari* under Rule 45 of the Rules of Court.

ASSIGNMENT OF ERRORS

Petitioner Oscar presents the following points as conclusions the CA should have made:

1. that the complaint is a mere nuisance or harassment suit that should be dismissed under the Interim Rules of Procedure of Intra-Corporate Controversies; and
2. that the complaint is not a *bona fide* derivative suit but is in fact in the nature of a petition for settlement of estate; hence, it is outside the jurisdiction of the RTC acting as a special commercial court.

Accordingly, he prays for the setting aside and annulment of the CA decision and resolution, and the dismissal of Rodrigo's complaint before the RTC.

THE COURT'S RULING

We find the petition meritorious.

The core question for our determination is whether the trial court, sitting as a special commercial court, has jurisdiction over the subject matter of Rodrigo's complaint. To resolve it, we rely on the judicial principle that "jurisdiction over the subject matter of a case is conferred by law and is determined by the allegations of the complaint, irrespective of whether the plaintiff is entitled to all or some of the claims asserted therein."[12]

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[12] *Speed Distributing Corp. v. Court of Appeals*, G.R. No. 149351, March 17, 2004, 425 SCRA 691; *Intestate Estate of Alexander Ty v. Court of Appeals*, G.R. No. 112872, April 19, 2001, 356 SCRA 661.

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JURISDICTION OF SPECIAL COMMERCIAL COURTS

P.D. No. 902-A enumerates the cases over which the SEC (now the RTC acting as a special commercial court) exercises exclusive jurisdiction:

SECTION 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnership, 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:

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 stockholders, partners, members of associations or organizations registered with the Commission.

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; and

c) Controversies in the election or appointment of directors, trustees, officers, or managers of such corporations, partnerships, or associations.

The allegations set forth in Rodrigo's complaint principally invoke Section 5, paragraphs (a) and (b) above as basis for the exercise of the RTC's special court jurisdiction. Our focus in examining the allegations of the complaint shall therefore be on these two provisions.

Fraudulent Devices and Schemes

The rule is that a complaint must contain a plain, concise, and direct statement of the ultimate facts constituting the plaintiff's

cause of action and must specify the relief sought.[13] Section 5, Rule 8 of the Revised Rules of Court provides that **in all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity**.[14] These rules find specific application to Section 5(a) of P.D. No. 902-A which speaks of corporate devices or schemes that amount to fraud or misrepresentation detrimental to the public and/or to the stockholders.

In an attempt to hold Oscar responsible for corporate fraud, Rodrigo alleged in the complaint the following:

3. This is a **complaint…to determine the shares of stock of the deceased spouses Pedro and Anastacia Reyes that were arbitrarily and fraudulently appropriated for himself [herein petitioner Oscar]** which were not collated and taken into account in the partition, distribution, and/or settlement of the estate of the deceased Spouses Pedro and Anastacia Reyes, for which he should be ordered to account for all the income from the time he took these shares of stock, and should now deliver to his brothers and sisters their just and respective shares with the corresponding equivalent amount of ₱7,099,934.82 plus interest thereon from 1978 representing his obligations to the Associated Citizens' Bank that was paid for his account by his late mother, Anastacia C. Reyes. This amount was not collated or taken into account in the partition or distribution of the estate of their late mother, Anastacia C. Reyes.

3.1. **Respondent Oscar C. Reyes, through other schemes of fraud including misrepresentation, unilaterally, and for his own benefit, capriciously transferred and took possession and control of the management of Zenith** Insurance Corporation which is considered as a family corporation, and other properties and businesses belonging to Spouses Pedro and Anastacia Reyes.

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[13] See REVISED RULES OF COURT, Rule 6, Section 1; Rule 7 Section 2(c); and Rule 8, Section 1.

[14] *Abad v. CFI Pangasinan*, G.R. No. 58507-08, February 26, 1992, 206 SCRA 567, 580.

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4.1. During the increase of capitalization of Zenith Insurance Corporation, sometime in 1968, the property covered by TCT No. 225324 was illegally and fraudulently used by respondent as a collateral.

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5. The complainant Rodrigo C. Reyes discovered that **by some manipulative scheme, the shareholdings of their deceased mother, Doña Anastacia C. Reyes, shares of stocks and [sic] valued in the corporate books at ₱7,699,934.28, more or less,** excluding interest and/or dividends, **had been transferred solely in the name of respondent**. By such fraudulent manipulations and misrepresentation, the shareholdings of said respondent Oscar C. Reyes abruptly increased to ₱8,715,637.00 [sic] and becomes [sic] the majority stockholder of Zenith Insurance Corporation, which portion of said shares must be distributed equally amongst the brothers and sisters of the respondent Oscar C. Reyes including the complainant herein.

x x x x x x x x x

9.1 The **shareholdings of deceased** Spouses Pedro Reyes and **Anastacia C. Reyes valued at ₱7,099,934.28 were illegally and fraudulently transferred solely to the respondent's [herein petitioner Oscar] name and installed himself as a majority stockholder of Zenith** Insurance Corporation [and] thereby deprived his brothers and sisters of their respective equal shares thereof including complainant hereto.

x x x x x x x x x

10.1 **By refusal of the respondent to account of his [sic] shareholdings in the company, he illegally and fraudulently transferred solely in his name wherein [sic] the shares of stock of the deceased Anastacia C. Reyes [which] must be properly collated and/or distributed equally amongst the children, including the complainant Rodrigo C. Reyes herein, to their damage and prejudice.**

x x x x x x x x x

11.1 By continuous refusal of the respondent to account of his [sic] shareholding with Zenith Insurance Corporation[,] particularly the number of shares of stocks illegally and fraudulently transferred

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to him from their deceased parents Sps. Pedro and Anastacia Reyes[,] which are all subject for collation and/or partition in equal shares among their children. [Emphasis supplied.]

Allegations of deceit, machination, false pretenses, misrepresentation, and threats are largely conclusions of law that, without supporting statements of the facts to which the allegations of fraud refer, do not sufficiently state an effective cause of action.[15] The late Justice Jose Feria, a noted authority in Remedial Law, declared that fraud and mistake are required to be averred with particularity in order to enable the opposing party to controvert the particular facts allegedly constituting such fraud or mistake.[16]

Tested against these standards, we find that the charges of fraud against Oscar were not properly supported by the required factual allegations. While the complaint contained allegations of fraud purportedly committed by him, these allegations are not particular enough to bring the controversy within the special commercial court's jurisdiction; they are not statements of ultimate facts, but are mere conclusions of law: how and why the alleged appropriation of shares can be characterized as "illegal and fraudulent" were not explained nor elaborated on.

Not every allegation of fraud done in a corporate setting or perpetrated by corporate officers will bring the case within the special commercial court's jurisdiction. To fall within this jurisdiction, there must be sufficient nexus showing that the corporation's nature, structure, or powers were used to facilitate the fraudulent device or scheme. Contrary to this concept, the complaint presented a reverse situation. No corporate power or office was alleged to have facilitated the transfer of the shares; rather, Oscar, as an individual and without reference to his corporate personality, was alleged to have transferred the shares of Anastacia to his name, allowing him to become the majority

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[15] *Santos v. Liwag*, G.R. No. L-24238, November 28, 1980, 101 SCRA 327.

[16] Civil Procedure Annotated, Vol. 1 (2001 ed.), p. 303.

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and controlling stockholder of Zenith, and eventually, the corporation's President. This is the essence of the complaint read as a whole and is particularly demonstrated under the following allegations:

> 5. The complainant Rodrigo C. Reyes discovered that by some manipulative scheme, the shareholdings of their deceased mother, Doña Anastacia C. Reyes, shares of stocks and [sic] valued in the corporate books at ₱7,699,934.28, more or less, excluding interest and/or dividends, had been transferred solely in the name of respondent. **By such fraudulent manipulations and misrepresentation, the shareholdings of said respondent Oscar C. Reyes abruptly increased to ₱8,715,637.00 [sic] and becomes [sic] the majority stockholder of Zenith Insurance Corporation,** which portion of said shares must be distributed equally amongst the brothers and sisters of the respondent Oscar C. Reyes including the complainant herein.
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> x x x x x x x x x
>
> 9.1 **The shareholdings of** deceased Spouses Pedro Reyes and **Anastacia C. Reyes** valued at ₱7,099,934.28 **were illegally and fraudulently transferred solely to the respondent's [herein petitioner Oscar] name and installed himself as a majority stockholder of Zenith** Insurance Corporation [and] thereby deprived his brothers and sisters of their respective equal shares thereof including complainant hereto. [Emphasis supplied.]

In ordinary cases, the failure to specifically allege the fraudulent acts does not constitute a ground for dismissal since such defect can be cured by a bill of particulars. In cases governed by the Interim Rules of Procedure on Intra-Corporate Controversies, however, a bill of particulars is a prohibited pleading.[17] It is essential, therefore, for the complaint to show on its face what are claimed to be the fraudulent corporate acts if the complainant wishes to invoke the court's special commercial jurisdiction.

We note that twice in the course of this case, Rodrigo had been given the opportunity to study the propriety of amending or withdrawing the complaint, but he consistently refused. The

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[17] Rule 1, Section 8(2).

court's function in resolving issues of jurisdiction is limited to the review of the allegations of the complaint and, on the basis of these allegations, to the determination of whether they are of such nature and subject that they fall within the terms of the law defining the court's jurisdiction. Regretfully, we cannot read into the complaint any specifically alleged corporate fraud that will call for the exercise of the court's special commercial jurisdiction. Thus, we cannot affirm the RTC's assumption of jurisdiction over Rodrigo's complaint on the basis of Section 5(a) of P.D. No. 902-A.[18]

Intra-Corporate Controversy

A review of relevant jurisprudence shows a development in the Court's approach in classifying what constitutes an intra-corporate controversy. Initially, the main consideration in determining whether a dispute constitutes an intra-corporate controversy was limited to a consideration of the intra-corporate relationship existing between or among the parties.[19] The types of relationships embraced under Section 5(b), as declared in the case of *Union Glass & Container Corp. v. SEC*,[20] were as follows:

a) between the corporation, partnership, or association and the public;

b) between the corporation, partnership, or association and its stockholders, partners, members, or officers;

c) between the corporation, partnership, or association and the State as far as its franchise, permit or license to operate is concerned; and

d) among the stockholders, partners, or associates themselves. [Emphasis supplied.]

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[18] Referring specifically to corporate fraud; see quoted provision at page 5 hereof.

[19] See *Sunset View Condominium Corp. v. Campos, Jr.*, 104 SCRA 295; *Philex Mining Corp. v. Reyes*, 118 SCRA 502; *Desa Enterprises, Inc. v. SEC*, 117 SCRA 321.

[20] G.R. No. 64013, November 28, 1983, 126 SCRA 31.

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The existence of any of the above intra-corporate relations was sufficient to confer jurisdiction to the SEC, regardless of the subject matter of the dispute. This came to be known as the **relationship test**.

However, in the 1984 case of *DMRC Enterprises v. Esta del Sol Mountain Reserve, Inc.*,[21] 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.[22] 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.

The Court then combined the two tests and declared that jurisdiction should be determined by considering not only the status or relationship of the parties, but also the nature of the question under controversy.[23] This two-tier test was adopted

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[21] G.R. No. 57936, September 28, 1984, 132 SCRA 293.

[22] *PSBA v. Leaño*, G.R. No. 58468, February 24, 1984, 127 SCRA 778, 783.

[23] *CMH Agricultural Corporation v. Court of Appeals*, G.R. No. 112625, March 7, 2002, 378 SCRA 545.

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in the recent case of *Speed Distribution, Inc. v. Court of Appeals:*[24]

> To determine whether a case involves an intra-corporate controversy, and is to be heard and decided by the branches of the RTC specifically designated by the Court to try and decide such cases, 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.
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> 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. If the nature of the controversy involves matters that are purely civil in character, necessarily, the case does not involve an intra-corporate controversy.

Given these standards, we now tackle the question posed for our determination under the specific circumstances of this case:

Application of the Relationship Test

Is there an intra-corporate relationship between the parties that would characterize the case as an intra-corporate dispute?

We point out at the outset that while Rodrigo holds shares of stock in Zenith, he holds them in two capacities: in his own right with respect to the 4,250 shares registered in his name, and as one of the heirs of Anastacia Reyes with respect to the 136,598 shares registered in her name. What is material in resolving the issues of this case under the allegations of the complaint is Rodrigo's *interest as an heir* since the subject matter of the present controversy centers on the shares of stocks belonging to Anastacia, not on Rodrigo's personally-owned shares

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[24] *Speed Distributing Corp., v. Court of Appeals*, *supra* note 12.

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nor on his personality as shareholder owning these shares. In this light, all reference to shares of stocks in this case shall pertain to the shareholdings of the deceased Anastacia and the parties' interest therein as her heirs.

Article 777 of the Civil Code declares that the successional rights are transmitted from the moment of death of the decedent. Accordingly, upon Anastacia's death, her children acquired legal title to her estate (which title includes her shareholdings in Zenith), and they are, prior to the estate's partition, deemed co-owners thereof.[25] This status as co-owners, however, does not immediately and necessarily make them stockholders of the corporation. Unless and until there is compliance with Section 63 of the Corporation Code on the manner of transferring shares, the heirs do not become registered stockholders of the corporation. Section 63 provides:

> Section 63. *Certificate of stock and transfer of shares*.— The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. **No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates, and the number of shares transferred.** [Emphasis supplied.]
>
> No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation.

Simply stated, the transfer of title by means of succession, though effective and valid between the parties involved (*i.e.*, between the decedent's estate and her heirs), does not bind the

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[25] Article 1078 of the Civil Code states: Where there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs, subject to the payment of debts of the deceased.

corporation and third parties. The transfer must be registered in the books of the corporation to make the transferee-heir a stockholder entitled to recognition as such both by the corporation and by third parties.[26]

We note, in relation with the above statement, that in *Abejo v. Dela Cruz*[27] and *TCL Sales Corporation v. Court of Appeals*[28] we did not require the registration of the transfer before considering the transferee a stockholder of the corporation (in effect upholding the existence of an intra-corporate relation between the parties and bringing the case within the jurisdiction of the SEC as an intra-corporate controversy). A marked difference, however, exists between these cases and the present one.

In *Abejo* and *TCL Sales*, the transferees held **definite and uncontested titles to a specific number of shares of the corporation**; after the transferee had established *prima facie* ownership over the shares of stocks in question, registration became a mere formality in confirming their status as stockholders. In the present case, each of Anastacia's heirs holds only an undivided interest in the shares. This interest, at this point, is still inchoate and subject to the outcome of a settlement proceeding; the right of the heirs to specific, distributive shares of inheritance will not be determined until all the debts of the estate of the decedent are paid. In short, the heirs are only entitled to what remains after payment of the decedent's debts;[29] whether there will be residue remains to be seen. Justice Jurado aptly puts it as follows:

No succession shall be declared unless and until a liquidation of the assets and debts left by the decedent shall have been made and

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[26] Additionally, Section 97 of the National Internal Revenue Code requires a certification from the Commissioner of Internal Revenue that the estate taxes have been paid before any shares in a domestic corporation is transferred in the name of the new owner.

[27] G.R. No. 63558, May 19, 1987, 149 SCRA 654.

[28] G.R. No. 129777, January 5, 2001, 349 SCRA 35.

[29] *Salvador v. Sta. Maria*, G.R. No. L-25952, June 30, 1967, 20 SCRA 603.

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all his creditors are fully paid. Until a final liquidation is made and all the debts are paid, the right of the heirs to inherit remains inchoate. This is so because under our rules of procedure, **liquidation is necessary in order to determine whether or not the decedent has left any liquid assets which may be transmitted to his heirs.**[30] [Emphasis supplied.]

Rodrigo must, therefore, hurdle two obstacles before he can be considered a stockholder of Zenith with respect to the shareholdings originally belonging to Anastacia. *First*, he must prove that there are shareholdings that will be left to him and his co-heirs, and this can be determined only in a settlement of the decedent's estate. No such proceeding has been commenced to date. *Second*, he must register the transfer of the shares allotted to him to make it binding against the corporation. He cannot demand that this be done unless and until he has established his specific allotment (and *prima facie* ownership) of the shares. Without the settlement of Anastacia's estate, there can be no definite partition and distribution of the estate to the heirs. Without the partition and distribution, there can be no registration of the transfer. And without the registration, we cannot consider the transferee-heir a stockholder who may invoke the existence of an intra-corporate relationship as premise for an intra-corporate controversy within the jurisdiction of a special commercial court.

In sum, we find that — insofar as the subject shares of stock (*i.e.*, Anastacia's shares) are concerned — Rodrigo cannot be considered a stockholder of Zenith. Consequently, we cannot declare that an intra-corporate relationship exists that would serve as basis to bring this case within the special commercial court's jurisdiction under Section 5(b) of PD 902-A, as amended. Rodrigo's complaint, therefore, fails the relationship test.

Application of the Nature of Controversy Test

The body rather than the title of the complaint determines the nature of an action.[31] Our examination of the complaint

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[30] Comments and Jurisprudence on Succession (1991 ed.), p. 5.

[31] 13 Fletcher §5912.

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yields the conclusion that, more than anything else, the complaint is about the protection and enforcement of successional rights. The controversy it presents is purely civil rather than corporate, although it is denominated as a "complaint for accounting of all corporate funds and assets."

Contrary to the findings of both the trial and appellate courts, we read only one cause of action alleged in the complaint. The "derivative suit for accounting of the funds and assets of the corporation which are in the control, custody, and/or possession of the respondent [herein petitioner Oscar]" does not constitute a separate cause of action but is, as correctly claimed by Oscar, only an incident to the "action for determination of the shares of stock of deceased spouses Pedro and Anastacia Reyes allegedly taken by respondent, its accounting and the corresponding delivery of these shares to the parties' brothers and sisters." There can be no mistake of the relationship between the "accounting" mentioned in the complaint and the objective of partition and distribution when Rodrigo claimed in paragraph 10.1 of the complaint that:

> 10.1 By refusal of the respondent to account of [sic] his shareholdings in the company, he illegally and fraudulently transferred solely in his name wherein [sic] the shares of stock of the deceased Anastacia C. Reyes [which] must be properly collated and/or distributed equally amongst the children including the complainant Rodrigo C. Reyes herein to their damage and prejudice.

We particularly note that the complaint contained no sufficient allegation that justified the need for an accounting *other than* to determine the extent of Anastacia's shareholdings for purposes of distribution.

Another significant indicator that points us to the real nature of the complaint are Rodrigo's repeated claims of illegal and fraudulent transfers of Anastacia's shares by Oscar to the prejudice of the other heirs of the decedent; he cited these allegedly fraudulent acts as basis for his demand for the collation and distribution of Anastacia's shares to the heirs. These claims tell us unequivocally that the present controversy arose from

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the parties' relationship *as heirs* of Anastacia and *not as shareholders of Zenith*. Rodrigo, in filing the complaint, is enforcing his rights as a co-heir and not as a stockholder of Zenith. The injury he seeks to remedy is one suffered by an heir (for the impairment of his successional rights) and not by the corporation nor by Rodrigo as a shareholder on record.

More than the matters of injury and redress, what Rodrigo clearly aims to accomplish through his allegations of illegal acquisition by Oscar is the distribution of Anastacia's shareholdings without a prior settlement of her estate — an objective that, by law and established jurisprudence, cannot be done. The RTC of Makati, acting as a special commercial court, has no jurisdiction to settle, partition, and distribute the estate of a deceased. A relevant provision — Section 2 of Rule 90 of the Revised Rules of Court — that contemplates properties of the decedent held by one of the heirs declares:

> **Questions as to advancement** made or alleged to have been made by the deceased to any heir **may be heard and determined by the *court having jurisdiction of the estate proceedings***; and the final order of the court thereon shall be binding on the person raising the questions and on the heir. [Emphasis supplied.]

Worth noting are this Court's statements in the case of *Natcher v. Court of Appeals:*[32]

> **Matters which involve settlement and distribution of the estate of the decedent fall within the exclusive province of the probate court** in the exercise of its limited jurisdiction.
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> x x x x x x x x x
>
> It is clear that trial **courts trying an ordinary action cannot resolve to perform acts pertaining to a special proceeding** because it is subject to specific prescribed rules. [Emphasis supplied.]

That an accounting of the funds and assets of Zenith to determine the extent and value of Anastacia's shareholdings will be undertaken by a probate court and not by a special

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[32] G.R. 133000, October 2, 2001, 366 SCRA 385, 392.

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commercial court is completely consistent with the probate court's limited jurisdiction. It has the power to enforce an accounting as a necessary means to its authority to determine the properties included in the inventory of the estate to be administered, divided up, and distributed. Beyond this, the determination of title or ownership over the subject shares (whether belonging to Anastacia or Oscar) may be *conclusively settled* by the probate court as a question of collation or advancement. We had occasion to recognize the court's authority to act on questions of title or ownership in a collation or advancement situation in *Coca v. Pangilinan*[33] where we ruled:

> It should be clarified that whether a particular matter should be resolved by the Court of First Instance in the exercise of its general jurisdiction or of its limited probate jurisdiction is in reality not a jurisdictional question. In essence, it is a procedural question involving a mode of practice "which may be waived."
>
> As a general rule, the question as to title to property should not be passed upon in the testate or intestate proceeding. That question should be ventilated in a separate action. That general rule has qualifications or exceptions justified by expediency and convenience.
>
> Thus, the probate court may provisionally pass upon in an intestate or testate proceeding the question of inclusion in, or exclusion from, the inventory of a piece of property without prejudice to its final determination in a separate action.
>
> **Although generally, a probate court may not decide a question of title or ownership, yet if** the interested parties are all heirs, or **the question is one of collation or advancement**, or the parties consent to the assumption of jurisdiction by the probate court and the rights of third parties are not impaired**, the probate court is competent to decide the question of ownership**. [Citations omitted. Emphasis supplied.]

In sum, we hold that the *nature* of the present controversy is not one which may be classified as an intra-corporate dispute and is beyond the jurisdiction of the special commercial court to resolve. In short, Rodrigo's complaint also fails the nature of the controversy test.

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[33] G.R. No. L-27082, January 21, 1978, 81 SCRA 278.

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DERIVATIVE SUIT

Rodrigo's bare claim that the complaint is a derivative suit will not suffice to confer jurisdiction on the RTC (as a special commercial court) if he cannot comply with the requisites for the existence of a derivative suit. These requisites are:

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

b. the party 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.[34]

Based on these standards, we hold that the allegations of the present complaint do not amount to a derivative suit.

First, as already discussed above, Rodrigo is not a shareholder with respect to the shareholdings originally belonging to Anastacia; he only stands as a transferee-heir whose rights to the share are inchoate and unrecorded. With respect to his own individually-held shareholdings, Rodrigo has not alleged any individual cause or basis as a shareholder on record to proceed against Oscar.

Second, in order that a stockholder may show a right to sue on behalf of the corporation, he must allege with some particularity in his complaint that he has exhausted his remedies *within the corporation* by making a sufficient demand upon the directors or other officers for appropriate relief with the expressed intent to sue if relief is denied.[35] Paragraph 8 of the complaint hardly satisfies this requirement since what the rule contemplates is the exhaustion of remedies *within* the corporate setting:

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[34] Villanueva, C., *Philippine Corporate Law* (1998 ed.), p. 370.

[35] 13 Fletcher §5963.

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8. As members of the same family, complainant Rodrigo C. Reyes has resorted [to] and exhausted all legal means of resolving the dispute with the end view of amicably settling the case, but the dispute between them ensued.

Lastly, we find no injury, actual or threatened, alleged to have been done to the corporation due to Oscar's acts. If indeed he illegally and fraudulently transferred Anastacia's shares in his own name, then the damage is not to the corporation but to his co-heirs; the wrongful transfer did not affect the capital stock or the assets of Zenith. As already mentioned, neither has Rodrigo alleged any particular cause or wrongdoing against the corporation that he can champion in his capacity as a shareholder on record.[36]

In summary, whether as an individual or as a derivative suit, the RTC — sitting as special commercial court — has no jurisdiction to hear Rodrigo's complaint since what is involved is the determination and distribution of successional rights to the shareholdings of Anastacia Reyes. Rodrigo's proper remedy, under the circumstances, is to institute a special proceeding for the settlement of the estate of the deceased Anastacia Reyes, a move that is not foreclosed by the dismissal of his present complaint.

WHEREFORE, we hereby *GRANT* the petition and *REVERSE* the decision of the Court of Appeals dated May 26, 2004 in CA-G.R. SP No. 74970. The complaint before the Regional Trial Court, Branch 142, Makati, docketed as Civil Case No. 00-1553, is ordered *DISMISSED* for lack of jurisdiction.

SO ORDERED.

Quisumbing (Chairperson), Corona,[*] *Carpio Morales,* and *Velasco, Jr., JJ.,* concur.

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[36] See 13 Fletcher §5915.

[*] Designated Additional Member of the Second Division per Special Order No. 512 dated July 16, 2008.