that the grant is not automatic. The claimant must still prove the factual basis of the damage and the causal relation to the defendant's case.[37] In ths case, while there is a showing of bad faith on the part of the employer in the commission of acts of unfair labor practice, there is no evidence establishing the factual basis of the damage on the part of SMART.

WHEREFORE, premises considered, the petitioons are **DENIED.** The Decision dated 30 January 2009 and the Resolution dated 20 May 2009 issued by the Court of Appeals in CA-G.R. SP No. 100722 are **AFFIRMED.**

SO ORDERED.

Leonardo-de Castro, Bersamin, Perlas-Bernabe, and *Caquioa, JJ.,* concur.

SECOND DIVISION

[G.R. No. 203527. June 27, 2016]

SPS. AURELIO HITEROZA and CYNTHIA HITEROZA, *petitioners, vs.* **CHARITO S. CRUZADA, President and Chairman, CHRIST'S ACHIEVERS MONTESSORI, INC., and CHRIST'S ACHIEVERS MONTESSORI, INC.,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES (AM NO. 01-2-04-SC); JUDGMENT BEFORE PRE-TRIAL MAY ONLY BE RENDERED AFTER THE PARTIES' SUBMISSION OF THEIR RESPECTIVE PRE-TRIAL

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[37] *First Lepanto-Taisho Insurance Corp. v. Chevron Phil. Inc.*, 679 Phil. 313, 329 (2012).

BRIEFS.— Section 4, Rule 4 of the Interim Rules provides that a judgment before pre-trial, as in the present case, may only be rendered after the parties' submission of their respective pre-trial briefs. x x x Complementing Section 4 is Section 1, Rule 4 of the Interim Rules which provides for the mandatory conduct of a pre-trial conference, x x x The conduct of a pre-trial is mandatory under the Interim Rules. Except in cases of default, Sections 1 and 4 of Rule 4 of the Interim Rules require the conduct of a pre-trial conference and the submission of the parties' pre-trial briefs **before the court may render a judgment** on intra-corporate disputes. Rule 7 of the Interim Rules (*Inspection of Corporate Books and Records*) [which] dispenses with the need for a pre-trial conference or the submission of a pre-trial brief before the court may render a judgment **applies only to disputes exclusively involving the rights of stockholders or members to inspect the books and records and/or to be furnished with the financial statements of a corporation.**

2. ID.; ID.; ID.; CREATION OF A MANAGEMENT COMMITTEE; REQUIREMENTS THEREIN APPLY TO APPOINTMENT OF A RECEIVER.— A corporation may be placed under receivership, or management committees may be created to preserve properties involved in a suit and to protect the rights of the parties under the control and supervision of the court. Section 1, Rule 9 of the Interim Rules provides: *SECTION 1. Creation of a management committee*. – As an incident to any of the cases filed under these Rules or the Interim Rules on Corporate Rehabilitation, a party may apply for the appointment of a management committee for the corporation, partnership or association, when there is imminent danger of: (1) Dissipation, loss, wastage, or destruction of assets or other properties; and (2) Paralyzation of its business operations which may be prejudicial to the interest of the minority stockholders, parties-litigants, or the general public. Section 2, Rule 9 of the Interim Rules, on the other hand, provides for the appointment of a receiver, xxx While the caption of Section 1, Rule 9 states "the creation of a management committee," the requirements stated in Section 1 apply to both the creation of a management committee and the appointment of a receiver, as can be gleaned from Section 2, Rule 9 which refers to "the application sufficient in form and substance." The "application" referred to in Section 2 on *Receiver* is the same application referred to in Section 1 of Rule 9.

APPEARANCES OF COUNSEL

Palabasan Taala & Associates Law Office for petitioners.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by the petitioner spouses Aurelio and Cynthia Hiteroza (*Sps. Hiteroza*) assailing the July 9, 2012 decision[2] and September 19, 2012 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 124096.

THE FACTS

Christ's Achievers Montessori, Inc. is a non-stock, non-profit corporation that operates a school in San Jose del Monte, Bulacan (hereinafter referred to as the school).[4] The petitioner Sps. Hiteroza and the respondent Charito Cruzada (*Charito*) are the incorporators, members and trustees of the School, together with Alberto Cruzada, the husband of Charito, and Jaina R. Salangsang (*Jaina*), the mother of Cynthia and Charito.[5]

On February 25, 2010, the Sps. Hiteroza filed a *Complaint*[6] for a derivative suit with prayer for the creation of a management committee, the appointment of a receiver, and a claim for damages against Charito, the President and Chairman of the school.[7]

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[1] *Rollo*, pp. 8-30.

[2] Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Abraham B. Borreta. *Id.* at 400-420.

[3] Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Samuel H. Gaerlan. *Id.* at 449-450.

[4] *Id.* at 162.

[5] *Id.* at 401.

[6] Docketed as Civil Case No. 130-M-2010. *Id.* at 161-182.

[7] *Id.* at 401.

The Sps. Hiteroza alleged that Charito employed schemes and acts resulting in dissipation, loss, or wastage of the school's assets that, if left unchecked, would likely cause paralysis of the school operations, amounting to fraud and misrepresentation detrimental and prejudicial to the school's interests.[8] The particular alleged schemes and acts of Charito that brought about the Sps. Hiteroza's prayer for the creation of a management committee and the appointment of a receiver are as follows:

First, Charito lied about the school's financial status and concealed the school's real income.[9] The Sps. Hiteroza discovered the discrepancies in the reported number of enrolled students versus the actual number of enrolled students.[10] The Sps. Hiteroza claimed that the school has missing funds due to Charito's fraud.[11]

Second, Charito refused the Sps. Hiteroza's request to examine the corporate and financial records of the school, as well as an accounting of the school's receipts and expenses.[12] Charito also refused to conduct regular and special annual board meetings and the election of officers.[13]

Third, the school's debt with Unitrust Development Bank secured by the Sps. Hiteroza's three (3) lots and which are now used as the school site, ballooned from ₱2,000,000.00 to ₱7,512,492.24 due to the school's late payments or non-payment, contrary to Charito's assurance that the loan was back to ₱2,000,000.00.[14]

Fourth, Charito faked the Securities and Exchange Commission (*SEC*) reportorial requirements when she filed the General Information Sheets for the years 2006 and 2008 and falsely reported that there were annual members' meetings held when there had been none. Charito also filed an Amended Articles of Incorporation using the

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[8] *Id.* at 401-402.

[9] *Id.* at 402.

[10] *Id.*

[11] *Id.*

[12] *Id.* at 403.

[13] *Id.*

[14] *Id.*

old signature page of the original Articles of Incorporation, without the Sps. Hiteroza's consent, and forged Cynthia's signature in the school's financial statements.[15]

Fifth, Charito caused the illegal transfer of Jaina's membership in the school to her son, Jerameel S. Cruzada. The Sps. Hiteroza claimed that the school's bylaws provide that the membership is nontransferable and Jaina could not have transferred her membership since she was already suffering from alzheimer's disease.[16]

Sixth, Charito and her family's wealth and lifestyle do not correspond with Charito and her husband' earnings of ₱10,000.00 and ₱8,000.00 per month respectively, as reflected in the School records.[17] Charito bought a house and lot at Marilao, Bulacan, with a cost of around ₱3,000,000.00 and an Isuzu Crosswind Sportivo which cost around ₱1,200,000.00.

Seventh, Charito used the school premises as her family's personal quarters without paying rent and used the school's funds to pay for their utility bills.[18]

Charito filed her belated *Answer*[19] dated April 12, 2010, and argued that the *complaint* is a nuisance and harassment suit.[20] Charito averred that the Sps. Hiteroza's real motive is to access and secure for themselves the school's income; the Sps. Hiteroza professed their "concern" for the school affairs only after almost ten (10) years.[21] Charito also averred that her family's house is situated at a low-cost subdivision and their car was obtained through hard work and not through fraud.[22]

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[15] *Id.* at 404.

[16] *Id*.

[17] *Id*.

[18] *Id.* at 405.

[19] *Id.* at 317-331.

[20] *Id.* at 405.

[21] *Id*.

[22] *Id*.

Charito argued that the "serious situation test" in the case of *Pryce Corporation v. China Banking Corporation*[23] on the appointment of a management committee or a receiver has not been satisfied.[24] The complaint failed to show that there is a serious and imminent danger of dissipation, loss, wastage, or destruction of assets and paralysis of business operations that may be prejudicial to the minority interest of stockholders, parties-litigants, or to the general public, and that there is a necessity to preserve the parties-litigants, investors, and the creditors' rights and interests.[25]

Charito claimed that the school's improvement negates the accusation of mismanagement.[26] On the Sps. Hiteroza's right of inspection, Charito claims that a derivative suit is not the proper remedy since the right of inspection is the stockholder's personal right and his cause of action is individual.[27] Further, the derivative suit requirements have not been complied with since there is no allegation that the Sps. Hiteroza exhausted all available remedies under the school's Articles of Incorporation and By-Laws.[28] Finally, the complaint has no allegation of earnest efforts towards a compromise, a jurisdictional requirement, considering that the parties are siblings.[29]

THE RTC RULING

On May 14, 2010, the Regional Trial Court (*RTC*) rendered a *decision*[30] (the ***May 14, 2010 RTC decision***) directing Charito to allow the Sps. Hiteroza or their duly authorized representative to have access to, inspect, examine, and secure copies of books

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[23] G.R. No. 172302, February 18, 2014, 716 SCRA 217.

[24] *Rollo*, p. 405.

[25] *Id.*

[26] *Id.* at 406.

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.* at 83-90.

of accounts and other pertinent records of the school. The RTC recognized that the Sps. Hiteroza, as stockholders, have the right to inspect the school's books and records and/or be furnished with the school's financial statements under Sections 74 and 75 of the Corporation Code of the Philippines.

The RTC, however, held that the allegations in the complaint do not amount to a derivative suit since any injury that may result from the claimed fraudulent acts of Charito will only affect the Sps. Hiteroza and not the school.[31] The RTC also held that the prayer for the creation of a management committee or the appointment of a receiver was **premature** since there was yet no evidence in the complaint to support the Sps. Hiteroza's allegations of fraud or misrepresentation.[32]

The Sps. Hiteroza's inspection of the School's corporate books was conducted on June 14 to 15, 2010.[33]

On September 21, 2010, the Sps. Hiteroza filed a *Report on the Inspection of Corporate Documents* (*1st Report*); they alleged that despite demand, Charito did not produce all the documents for inspection.[34] With the available documents, the Sps. Hiteroza discovered misuse, wrong declaration and/or wrong recording of funds, as well as missing funds from the coffers of the school amounting to fraud and/or misrepresentation that are detrimental to the school's interests.[35] The Sps. Hiteroza reiterated their prayer for the creation of a management committee and the appointment of a receiver for the school.[36]

Charito filed her *Comment* on the *1st Report* and claimed that this report is in the form of a motion for reconsideration which is a prohibited pleading under Rule 15 of the Rules of

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[31] *Id.* at 86-87.

[32] *Id.* at 85.

[33] *Id.* at 408.

[34] *Id.*

[35] *Id.* at 409.

[36] *Id.*

Court. Charito claims that the appointment of a management committee or a receiver is a provisional remedy and could not be obtained after no appeal was filed and the May 14, 2010 RTC decision lapsed to finality.[37]

Charito, however, admitted during the hearing before the RTC that not all documents were presented for the Sps. Hiteroza's inspection.[38] Hence, the RTC issued an *Order*[39] directing the inspection of the school's books of account.[40]

On January 17, 2011, the Sps. Hiteroza filed a *2nd Report on the Inspection of Corporate Documents* and reiterated their prayer for the creation of a management committee and the appointment of a receiver for the school. The Sps. Hiteroza alleged that Charito again refused to produce the school's main bank accounts records. The Sps. Hiteroza also alleged that their accountants found that, based on the declared amounts in the corporate books of accounts, the total unaccounted income of the School for the years 2000 to 2009 amounted to ₱27,446,989.35.

The RTC issued an *Order* dated March 3, 2011, referring the dispute for mediation at the Philippine Mediation Center, Bulacan Office.[41] The parties appeared for mediation as directed but no settlement was reached.[42] The Sps. Hiteroza filed a *Manifestation with Motion* dated November 9, 2011, reiterating their prayer for the appointment of a rehabilitation receiver and/or management committee.[43]

On March 16, 2012, the RTC issued an Order (*assailed RTC order*) appointing Atty. Rafael Chris F. Teston as the school's

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[37] *Id.* at 237-246.

[38] *Id.* at 409.

[39] RTC Order dated November 10, 2010.

[40] *Rollo*, p. 409.

[41] *Id.* at 410.

[42] *Id.*

[43] *Id.*

receiver in view of the "inability of the parties to work out an amicable settlement of their dispute, and in order to enable the court to ascertain the veracity of the claim of the [spouses Hiteroza] that Charito has unjustifiably failed and refused to comply with the final decision in this case dated May 14, 2010."[44]

Charito sought to nullify the assailed RTC order and filed a *Petition for Certiorari* dated April 3, 2012, with application for the issuance of a temporary restraining order and/or writ of preliminary injunction before the CA.[45] The Sps. Hiteroza argued that the RTC gravely abused its discretion in issuing the assailed RTC order on the appointment of a receiver since it was issued despite the absence of the following: (1) a verified application, (2) any ground enumerated under Section 1 of Rule 9 of the Interim Rules of Procedure for Intra-Corporate Controversies (A.M. No. 01-2-04-SC) (hereinafter referred to as the "Interim Rules"), or any "serious situation" as required by the Court in the *Pryce Corporation case*.[46] The Sps. Hiteroza also argued that the assailed RTC Order contradicted the final May 14, 2010 RTC decision denying the prayer for receivership or the creation of a management committee.[47]

THE CA RULING

In its decision[48] dated July 9, 2012, the CA granted Charito's petition and nullified the assailed RTC order on the appointment of a receiver.

The CA explained that the May 14, 2010 RTC decision already denied the Sps. Hiteroza's prayer for the creation of a management committee or the appointment of a receiver for lack of evidence

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[44] *Id.* at 77, 410-412.

[45] *Id.* at 401.

[46] *Id.* at 48-50.

[47] *Id.* at 413.

[48] *Id.* at 400-423.

and for being premature.[49] The May 14, 2010 RTC decision eventually became final and executory since no appeal was filed.[50]

The CA held that the RTC gravely abused its powers in reconsidering its final decision on the basis of the Sps. Hiteroza's reports on the inspection of the school records.[51] The CA noted that the Sps. Hiteroza's reports, which reiterated their prayer for the creation of a management committee and the appointment of a receiver, are veiled attempts to move for the reconsideration of the RTC decision; a motion for reconsideration is a prohibited pleading under Section 8 (3),[52] Rule 1 of the Interim Rules.[53]

The CA also held that there was noncompliance with the requisites for the appointment of a receiver under Section 1, Rule 9 of the Interim Rules.[54] The CA declared that the allegations on the school's dissipation of assets and funds have yet to be proven and that the RTC was still in the process of ascertaining the veracity of the Sps. Hiteroza's claims.[55] Further, there is no showing that the school is in imminent danger of paralysation of its business operations.[56]

The Sps. Hiteroza filed a motion for reconsideration of the CA decision, but the CA denied the motion for lack of merit.[57]

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[49] *Id.* at 417.

[50] *Id.*

[51] *Id.*

[52] **SEC. 8.** ***Prohibited pleadings***. — The following pleadings are prohibited:

1. Motion to dismiss;

2. Motion for a bill of particulars;

3. Motion for new trial, or for **reconsideration of judgment or order**, or for re-opening of trial; x x x (emphasis supplied)

[53] *Rollo*, p. 417.

[54] *Id.* at 417-418.

[55] *Id.* at 418.

[56] *Id.*

[57] CA Resolution dated September 19, 2012, *rollo*, pp. 449-450.

THE PETITION

The Sps. Hiteroza filed the present petition for review on *certiorari* to challenge the CA ruling.

The Sps. Hiteroza argue that the CA ruling is erroneous since it considers the May 14, 2010 RTC decision as a final judgment when, in fact, the RTC decision is preliminary as it merely grants a remedy by way of a mode of discovery,[58] *i.e.*, the inspection of corporate documents, books, and records. The May 14, 2010 RTC decision merely granted one of the reliefs asked for by the Sps. Hiteroza, but by itself, does not address all of the Sps. Hiteroza's causes of action in their complaint.[59] More importantly, Charito has not fully complied with the May 14, 2010 RTC decision since Charito refused to open the School's other corporate books and records for inspection.[60]

The Sps. Hiteroza also argue that the reports have extensively shown that there was dissipation of the school's assets and funds and that the school is heavily indebted to the bank, thus warranting the appointment of a receiver.[61]

THE ISSUES

The issues of the petition are: (1) whether the May 14, 2010 RTC Decision is a final judgment; and (2) whether the CA correctly nullified the assailed RTC Order which directed the appointment of a receiver.

OUR RULING

We ***partially grant*** the petition.

The May 14, 2010 RTC decision is <u>not</u> a final judgment since the case is not ripe for decision. No pre-trial has been

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[58] *Id.* at 24.

[59] *Id.* at 25.

[60] *Id.* at 26.

[61] *Id.* at 28-29.

conducted pursuant to the Interim Rules and the parties have not submitted their pre-trial briefs.

Section 4, Rule 4 of the Interim Rules provides that a judgment before pre-trial, as in the present case, may only be rendered after the parties' submission of their respective pre-trial briefs.

SEC. 4. Judgment before pre-trial. — If, **after submission of the pre-trial briefs**, the court determines that, upon consideration of the pleadings, the affidavits and other evidence submitted by the parties, **a judgment may be rendered**, the court may order the parties to file simultaneously their respective memoranda within a non-extendible period of twenty (20) days from receipt of the order. Thereafter, the court shall render judgment, either full or otherwise, not later than ninety (90) days from the expiration of the period to file the memoranda. (emphases supplied)

Complementing Section 4 is Section 1, Rule 4 of the Interim Rules which provides for the mandatory conduct of a pre-trial conference, to quote:

SECTION 1. ***Pre-trial conference; mandatory nature.*** — Within five (5) days after the period for availment of, and compliance with, the modes of discovery prescribed in Rule 3 hereof, whichever comes later, the court shall issue and serve an order immediately setting the case for pre-trial conference and directing the parties to submit their respective pre-trial briefs. The parties shall file with the court and furnish each other copies of their respective pre-trial brief in such manner as to ensure its receipt by the court and the other party at least five (5) days before the date set for the pre-trial. x x x.

The conduct of a pre-trial is mandatory under the Interim Rules.[62] Except in cases of default,[63] Sections 1 and 4 of Rule

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[62] *Recto v. Escaler, S. J.*, 648 Phil. 399, 410 (2010).

[63] Rule 2 of Section 7.

Sec. 7. *Effect of failure to answer*. — If the defendant fails to answer within the period above provided, he shall be considered in default. Upon motion or *motu proprio*, the court shall render judgment either dismissing the complaint or granting the relief prayed for as the records may warrant. In no case shall the court award a relief beyond or different from that prayed for (*Interim Rules of Procedure for Intra-Corporate Controversies*).

4 of the Interim Rules require the conduct of a pre-trial conference and the submission of the parties' pre-trial briefs **before the court may render a judgment** on intra-corporate disputes.

Rule 7 of the Interim Rules (*Inspection of Corporate Books and Records*) dispenses with the need for a pre-trial conference or the submission of a pre-trial brief before the court may render a judgment. This Rule, however, **applies only to disputes exclusively involving the rights of stockholders or members to inspect the books and records and/or to be furnished with the financial statements of a corporation.**[64]

In the present case, Rule 7 of the Interim Rules does not apply since the Sps. Hiteroza's complaint did not exclusively involve the denial of the Sps. Hiteroza's right to inspect the school's records, but also several other allegations of Charito's fraud and misrepresentation in the School's management. There has been no conduct of a pre-trial conference or the submission of the parties' respective pre-trial briefs before the issuance of the May 14, 2010 RTC decision. The issuance of the May 14, 2010 RTC decision was, thus, premature.

Even a cursory examination of the issue on whether the CA correctly nullified the assailed RTC Order directing the appointment of the school's receiver immediately leads us to conclude that this is a question of fact that is not within the authority of this Court to decide. More importantly, the factual issue has not been ventilated in the proper proceedings before the trial court because the case did not even reach the pre-trial stage.[65] Thus, the appointment of the school's receiver is premature.

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[64] Rule 7, Section 1. ***Cases covered***. — The provisions of the Rule shall apply to disputes exclusively involving the rights of stockholders or members to inspect the books and records and/or to be furnished with the financial statements of a corporation, under Sections 74 and 75 of *Batas Pambansa Blg. 68*, otherwise known as the Corporation Code of the Philippines.

[65] *Supra* note 62, at 408-409.

The requirements in Section 1, Rule 9 of the Interim Rules apply to both the creation of a management committee and/or the appointment of a receiver.

Without going into the factual circumstances on the propriety of the appointment of a receiver, we find that the CA correctly applied the requisites of Section 1, Rule 9 of the Interim Rules (on the creation of a management committee) to determine the propriety of the appointment of a receiver.

A corporation may be placed under receivership, or management committees may be created to preserve properties involved in a suit and to protect the rights of the parties under the control and supervision of the court.[66]

Section 1, Rule 9 of the Interim Rules provides:

SECTION 1. Creation of a management committee. — As an incident to any of the cases filed under these Rules or the Interim Rules on Corporate Rehabilitation, a party may apply for the appointment of a management committee for the corporation, partnership or association, when there is imminent danger of:

(1) Dissipation, loss, wastage, or destruction of assets or other properties; and

(2) Paralyzation of its business operations which may be prejudicial to the interest of the minority stockholders, parties-litigants, or the general public.

Section 2, Rule 9 of the Interim Rules, on the other hand, provides for the appointment of a receiver, to quote:

SEC. 2. Receiver. — In the event the court finds the application to be sufficient in form and substance, the court shall issue an order: (a) appointing a receiver of known probity, integrity and competence and without any conflict of interest as hereunder defined to immediately take over the corporation, partnership or association, specifying such powers as it may deem appropriate under the

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[66] *Villamor, Jr. v. Umale*, G.R. No. 172843, September 24, 2014, 736 SCRA 325, 352.

circumstances, including any of the powers specified in Section 5 of this Rule; (b) fixing the bond of the receiver; (c) directing the receiver to make a report as to the affairs of the entity under receivership and on other relevant matters within sixty (60) days from the time he assumes office; (d) prohibiting the incumbent management of the company, partnership, or association from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business; and (e) directing the payment in full of all administrative expenses incurred after the issuance of the order.

While the caption of Section 1, Rule 9 states "the creation of a management committee," the requirements stated in Section 1 apply to both the creation of a management committee and the appointment of a receiver, as can be gleaned from Section 2, Rule 9 which refers to "the application sufficient in form and substance." The "application" referred to in Section 2 on *Receiver* is the same application referred to in Section 1 of Rule 9.

The recent case of *Villamor, Jr. v. Umale*[67] that touches on these points, is instructive:

x x x Management committees and receivers are appointed when the corporation is in imminent danger of "(1) [d]issipation, loss, wastage or destruction of assets or other properties; and (2) [p]aralysation of its business operations that may be prejudicial to the interest of the minority stockholders, parties-litigants, or the general public."

Applicants for the appointment of a receiver or management committee need to establish the confluence of these two requisites. This is because appointed receivers and management committees will immediately take over the management of the corporation and will have the management powers specified in law. This may have a negative effect on the operations and affairs of the corporation with third parties,[86] as persons who are more familiar with its operations are necessarily dislodged from their positions in favor of appointees who are strangers to the corporation's operations and affairs. (emphasis supplied)

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[67] *Id.* at 352-353.

In *Villamor, Jr.,* the Court recognized that Section 1, Rule 9 of the Interim Rules **applies to both** the appointment of a receiver and the creation of a management committee. Further, the Court held that there must be imminent danger of **both** the dissipation, loss, wastage, or destruction of assets or other properties; **and** paralysation of its business operations that may be prejudicial to the interest of the minority stockholders, parties-litigants, or the general public, before allowing the appointment of a receiver or the creation of a management committee.

In the case of *Sy Chim v. Sy Siy Ho & Sons, Inc.*,[68] the Court similarly held that the two requisites found in Section 1 of Rule 9 of the Interim Rules should be present before a management committee may be created and a **receiver appointed** by the RTC.

The reason for the stringent requirements on the creation of a management committee and the appointment of a receiver was explained in the *Sy Chim* case, as follows:

> The rationale for the need to establish the confluence of the two (2) requisites under Section 1, Rule 9 by an applicant for the appointment of a management committee is primarily based upon the fact that such committee and receiver appointed by the court will immediately take over the management of the corporation, partnership or association, including such power as it may deem appropriate, and any of the powers specified in Section 5 of the Rule. x x x.
>
> Thus, the creation and appointment of a management committee and a receiver is an extraordinary and drastic remedy to be exercised with care and caution; and only when the requirements under the Interim Rules are shown. It is a drastic course for the benefit of the minority stockholders, the parties-litigants, or the general public allowed only under pressing circumstances and, when there is inadequacy, or ineffectual exhaustion of legal or other remedies. The power to intervene before the legal remedy is exhausted and misused when it is exercised in aid of such a purpose. The power of the court to continue a business of a corporation, partnership, or association must be exercised with the greatest care and caution.

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[68] G.R. No. 164958, January 27, 2006, 480 SCRA 465, 493-496.

There should be a full consideration of all the attendant facts, including the interest of all the parties concerned.[69]

Considering the requirements for the appointment of a receiver, we find that the CA correctly attributed grave abuse of discretion on the part of the RTC when the RTC prematurely appointed a receiver without sufficient evidence to show that there is an imminent danger of: (1) dissipation, loss, wastage, or destruction of assets or other properties; **and** (2) paralysation of its business operations that may be prejudicial to the interest of the minority stockholders, parties-litigants, or the general public. The RTC explicitly stated in its May 14, 2010 decision that there was yet no evidence to support the Sps. Hiteroza's allegations on Charito's fraud and misrepresentation to justify the appointment of a receiver.[70]

Further, the appointment of the school's receiver was not based on the presence of the requirements of Section 1, Rule 9 of the Interim Rules, but based on the "inability of the parties to work out an amicable settlement of their dispute, and in order to enable the court to ascertain the veracity of the claim of the [spouses Hiteroza] that Charito has unjustifiably failed and refused to comply with the final Decision in this case dated May 14, 2010."[71]

Considering these findings, we find that the CA correctly nullified the assailed RTC order appointing a receiver for the school without satisfying the requirements of Section 1, Rule 9 of the Interim Rules.

WHEREFORE, we hereby **PARTIALLY GRANT** the petition for review on certiorari. The decision dated July 9, 2012 of the Court of Appeals in CA-G.R. SP No. 124096 is **AFFIRMED** insofar as the appointment of Atty. Rafael Chris F. Teston as receiver for the School is nullified. Civil Case No. 130-M-2010 is **REMANDED** to the Regional Trial Court to

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[69] *Id.*

[70] *Rollo*, p. 85.

[71] *Id.* at 77.

enable the conduct of the pre-trial conference and of further proceedings.

SO ORDERED.

Carpio (Chairperson), *Mendoza,* and *Leonen, JJ.,* concur.

Del Castillo, J., on leave.

SECOND DIVISION

[G.R. No. 203538. June 27, 2016]

ARTEX DEVELOPMENT CO., INC., *petitioner, vs.* **OFFICE OF THE OMBUDSMAN, ATTY. MARISSA E. TIMONES, ERLINDA O. MARTEJA, ELIMAR N. JOSE, and ATTY. LUIS Y. DEL MUNDO, JR.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; OFFICE OF THE OMBUDSMAN; THE COURT DOES NOT INTERFERE WITH THE OMBUDSMAN'S EXERCISE OF ITS INVESTIGATIVE AND PROSECUTORIAL POWERS WITHOUT GOOD AND COMPELLING REASONS.— As a rule, the Court does not interfere with the Ombudsman's exercise of its investigative and prosecutorial powers without good and compelling reasons. We must stress that *certiorari* is an extraordinary prerogative writ that is never demandable as a matter of right. It is meant to correct only errors of jurisdiction and not errors of judgment committed in the exercise of the discretion of a tribunal or an officer. This is especially true in the exercise by the Ombudsman of its constitutionally mandated powers. Thus, we have consistently