



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

MARCELINO M. FLORETE, JR., G.R. No. 174909  
MARIA ELENA F. MUYCO and  
RAULA MUYCO,  
Petitioners,

-versus-

ROGELIO M. FLORETE,  
IMELDA C. FLORETE, DIAMEL  
CORPORATION, ROGELIO C.  
FLORETE JR., and MARGARET  
RUTH C. FLORETE,  
Respondents.

X-----X  
ROGELIO M. FLORETE SR.,  
Petitioner,

G.R. No. 177275

Present:

CARPIO, *Chairperson*,  
DEL CASTILLO,  
MENDOZA,  
PERLAS-BERNABE,\* and  
LEONEN, *JJ.*

-versus-

MARCELINO M. FLORETE, JR.,  
MARIA ELENA F. MUYCO AND  
RAULA MUYCO,  
Respondents.

Promulgated:

20 JAN 2016

X-----X *H.M. Cabalag Perfacto* X

\* Designated acting member per S.O. No. 2312 dated January 19, 2016.

## DECISION

### LEONEN, J.:

A stockholder may suffer from a wrong done to or involving a corporation, but this does not vest in the aggrieved stockholder a sweeping license to sue in his or her own capacity. The determination of the stockholder's appropriate remedy—whether it is an individual suit, a class suit, or a derivative suit—hinges on the object of the wrong done. When the object of the wrong done is the corporation itself or “the whole body of its stock and property without any severance or distribution among individual holders,”<sup>1</sup> it is a derivative suit, not an individual suit or class/representative suit, that a stockholder *must* resort to.

This resolves consolidated cases involving a Complaint for Declaration of Nullity of Issuances, Transfers and Sale of Shares in People's Broadcasting Service, Inc. and All Posterior Subscriptions and Increases thereto with Damages.<sup>2</sup> The Complaint did not implead as parties the concerned corporation, some of the transferees, transferors and other parties involved in the assailed transactions. The Petition<sup>3</sup> docketed as G.R. No. 174909 assails the Court of Appeals Decision affirming the dismissal of the Complaint and sustaining the award of ₱25,000,000.00 as moral damages and ₱5,000,000.00 as exemplary damages in favor of Rogelio Florete, Sr. The Petition<sup>4</sup> docketed as G.R. No. 177275 assails the Court of Appeals Decision that disallowed the immediate execution of the same award of damages.

Spouses Marcelino Florete, Sr. and Salome Florete (now both deceased) had four (4) children: Marcelino Florete, Jr. (Marcelino, Jr.), Maria Elena Muyco (Ma. Elena), Rogelio Florete, Sr. (Rogelio, Sr.), and Teresita Menchavez (Teresita), now deceased.<sup>5</sup>

People's Broadcasting Service, Inc. (People's Broadcasting) is a private corporation authorized to operate, own, maintain, install, and construct radio and television stations in the Philippines.<sup>6</sup> In its incorporation on March 8, 1966,<sup>7</sup> it had an authorized capital stock of ₱250,000.00 divided into 2,500 shares at ₱100.00 par value per share.<sup>8</sup>

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<sup>1</sup> *Cua v. Tan*, 622 Phil. 661, 717 (2009) [Per J. Leonardo-de Castro, First Division], *citing Oakland Raiders v. National Football League*, 131 Cal. App. 4th 621, 32 Cal. Rptr. 3d 266, Cal.App. 6 Dist., 2005, 28 July 2005.

<sup>2</sup> *Rollo* (G.R. No. 174909), p. 546.

<sup>3</sup> *Id.* at 42–159.

<sup>4</sup> *Rollo* (G.R. No. 177275), pp. 9–24.

<sup>5</sup> *Id.* at 60, Court of Appeals Decision.

<sup>6</sup> *Id.* at 60–61.

<sup>7</sup> *Id.* at 60.

<sup>8</sup> *Id.* at 61.

Twenty-five percent (25%) of the corporation's authorized capital stock were then subscribed to as follows:

Stockholder	Number of Shares
Marcelino Florete, Sr. (Marcelino, Sr.)	250 shares
Salome Florete (Salome)	100 shares
Ricardo Berlin (Berlin)	50 shares
Pacifico Sudario (Sudario)	50 shares
Atty. Santiago Divinagracia (Divinagracia), now deceased <sup>9</sup>	50 shares <sup>10</sup>

On November 17, 1967, Berlin and Sudario resigned from their positions as General Manager and Station Supervisor, respectively.<sup>11</sup> Berlin and Sudario each transferred 20 shares to Raul Muyco and Estrella Mirasol.<sup>12</sup>

Salome died on November 22, 1980.<sup>13</sup> Marcelino, Sr. suffered a stroke on July 12, 1982, which left him paralyzed and bedridden until his death on October 3, 1990.<sup>14</sup> After Marcelino, Sr.'s stroke, their son, Rogelio, Sr. started managing the affairs of People's Broadcasting.<sup>15</sup>

In October 1993, People's Broadcasting sought the services of the accounting and auditing firm Sycip Gorres Velayo and Co. in order to determine the ownership of equity in the corporation.<sup>16</sup> On November 2, 1994, Sycip Gorres Velayo and Co. submitted a report detailing the movements of the corporation's shares from November 23, 1967 to December 8, 1989.<sup>17</sup> The relevant portion of this report reads:

#### B. PEOPLE'S BROADCASTING SERVICE, INC. (PBS)

The movements in the capital stock accounts (by beneficial stockholders) are as follows:

Beneficial Stockholder	Shareholdings Nov. 27, 1967 (A)	Additional Subscription Sept. 1, 1982 (B)	Transfer of Shares of Stock March 1, 1983 (C)	Transfer of Shares of Stock (D)	Transfer of Shares of Stock June 5, 1987 (E)	Increase (F)	Shareholdings Oct. 31, 1993
Marcelino M. Florete, Sr.	560	-	750	(680)	-	62,344.19	62,974.19
Salome M. Florete	30	(30)	-	-	-		
Rogelio M.	20	5	1110	370	(5)	149,624.75	151,124.75

<sup>9</sup> *Rollo* (G.R. No. 174909), p. 1479, Petitioners' Memorandum.

<sup>10</sup> *Rollo* (G.R. No. 177275), p. 61, Court of Appeals Decision.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 62.

<sup>14</sup> *Id.*

<sup>15</sup> *Rollo* (G.R. No. 174909), p. 49, Petition.

<sup>16</sup> *Id.* at 483, Placitum.

<sup>17</sup> *Rollo* (G.R. No. 177275), p. 63, Court of Appeals Decision.

Florete							
Ma. Elena F. Muyco	20	5	-	-	(25)	2,493.68	2,493.68
Teresita F. Menchavez	-	5	-	20	(25)	2,493.69	2,493.69
Marcelino M. Florete, Jr.	-	5	-	20	(20)	2,493.44	2,493.44
Santiago C. Divinagracia	20	-	-	270	75	29,925.25	30,290.25
Newsound Broadcasting <sup>18</sup>	610	-	(610)				
Consolidated Broadcasting	-	1,250	(1,250)				
Total	1,260	1,250				249,375.00	251,875.00

(A) The People's Broadcasting Service, Inc. was incorporated in 1965 with an authorized capital stock of P250,000 divided into 2,500 shares at P100 par value. As of November 23, 1967, the total subscribed shares of stock was [sic] 1,260. The 610 shares issued in the name of [Newsounds Broadcasting Network, Inc.] was [sic] authorized by the Board of Directors in payment for the obligation of the Corporation to [Newsounds Broadcasting Network, Inc.].

....

(B) On August 5, 1982, the Board of Directors passed Resolution No. 4 which authorized Atty. Divinagracia to negotiate the purchase of two stations of Consolidated Broadcasting System, Inc. (CBS), DYMF and DXMF in Cebu and Davao, respectively. In consideration thereof, [People's Broadcasting Service, Inc.] shall issue 1,250 shares of stock in favor of [Consolidated Broadcasting System, Inc.]. In pursuance thereof, on September 1, 1982, the Corporation issued the remaining 1,240 shares of unissued capital stock to [Consolidated Broadcasting System, Inc.]. To complete the consideration of 1,250 shares, it was explained that [Salome] transferred her 10 shares to [Consolidated Broadcasting System, Inc.] and distributed her remaining 20 shares to her children, at 5 shares each.

(C) On March 1, 1983, all the 610 shares of [Newsounds Broadcasting Network, Inc.] were transferred to [Rogelio, Sr.]. We were not able to determine the person who endorsed the certificate in [sic] behalf [of] [Newsounds Broadcasting Network, Inc.] as the certificate was not found on file. On the same day, the entire investment of [Consolidated Broadcasting System, Inc.] were transferred to [Marcelino, Sr.] and [Rogelio, Sr.] at the proportion of 750 shares and 500 shares, respectively. The cancelled certificates of [Consolidated Broadcasting System, Inc.] were endorsed by [Rogelio, Sr.] in [sic] its behalf.

(D) On February 28 and August 1, 1983, [Marcelino, Sr.] transferred 680 shares from his block to the following:

Transferee	No. of Shares	Date of Transfer

<sup>18</sup> Newsound Broadcasting is sometimes referred to as *Newsounds* Broadcasting Network, Inc. For uniformity, *Newsounds* Broadcasting Network, Inc. will be used.

Rogelio M. Florete [Sr.]	370	February 28, 1983
Santiago C. Divinagracia	270	August 1, 1983
Marcelino M. Florete, Jr.	20	August 1, 1983
Teresita F. Menchavez	20	August 1, 1983
Total	680	

- (E) On June 3, 1987, the Corporation effected the transfer of 75 shares to [Divinagracia] by virtue of the deeds of sale executed by the transferors concerned in his favor.
- (F) On December 8, 1989, the [Securities and Exchange Commission] approved the application of the Corporation to increase the authorized capital stock to ₱100,000,000.00 divided into 1,000,000 shares at ₱100 par value. Of the increase, 249,375 shares were subscribed for ₱24,937,500 and ₱6,234,375 thereof was paid-up. The subscribers to the increase were as indicated in the foregoing.

There were no other transactions affecting the interest of the beneficial stockholders up to October 31, 1993 except transfers to and from designated nominees[.]<sup>19</sup>

Even as it tracked the movements of shares, Sycip Gorres Velayo and Co. declined to give a categorical statement on equity ownership as People's Broadcasting's corporate records were incomplete.<sup>20</sup> The report contained the following disclaimer on the findings regarding the corporation's capital structure:

Because the procedures *included certain assumptions* as represented by the corporate secretaries mentioned in Attachment I and *we have not verified the documents supporting some of the transactions*, we do not express an opinion on the capital stock accounts of the respective companies [including People's Broadcasting] as at October 31, 1993.<sup>21</sup> (Emphasis supplied)

On February 1, 1997, the Board of Directors of People's Broadcasting approved Sycip Gorres Velayo and Co.'s report.<sup>22</sup>

In the meantime, Rogelio, Sr. transferred a portion of his shareholdings to the members of his immediate family, namely: Imelda Florete, Rogelio Florete, Jr., and Margaret Ruth Florete, as well as to Diamel Corporation, a corporation owned by Rogelio, Sr.'s family.<sup>23</sup>

As of April 27, 2002, the stockholders of record of People's Broadcasting were the following:<sup>24</sup>

<sup>19</sup> *Rollo* (G.R. No. 174909), pp. 646–647, Sycip Gorres and Velayo, Co. Report.

<sup>20</sup> *Id.* at 483, Placitum.

<sup>21</sup> *Id.* at 640, Sycip Gorres and Velayo, Co. Report.

<sup>22</sup> *Rollo* (G.R. No. 177275), p. 63, Court of Appeals Decision.

<sup>23</sup> *Id.*

<sup>24</sup> *Rollo* (G.R. No. 174909), pp. 1455–1456, Petitioners' Memorandum.

<b>Stockholder</b>	<b>No. of Shares</b>
1. Diamel Corporation	30,000.00
2. Rogelio Florete [Sr.]	153,881.53
3. Marcelino Florete, Jr.	18,240.99
4. Ma. Elena Muyco	18,227.23
5. Santiago Divinagracia	30,289.25
6. Imelda Florete	1,000.00
7. Rogelio Florete, Jr.	100.00
8. Margaret Ruth Florete	100.00
9. Raul Muyco	10.00
10. Manuel Villa, Jr.	10.00
11. Gregorio Rubias	1.00
12. Cyril Regaldao	1.00
13. Jose Mari Treñas	1.00
14. Enrico Jacomille	1.00
15. Joseph Vincent Go	1.00
16. Jerry Treñas	1.00
17. Efrain Treñas	10.00

On June 23, 2003, Marcelino, Jr., Ma. Elena, and Raul Muyco (Marcelino, Jr. Group) filed before the Regional Trial Court a Complaint<sup>25</sup> for Declaration of Nullity of Issuances, Transfers and Sale of Shares in People’s Broadcasting Service, Inc. and All Posterior Subscriptions and Increases thereto with Damages<sup>26</sup> against Diamel Corporation, Rogelio, Sr., Imelda Florete, Margaret Florete, and Rogelio Florete, Jr. (Rogelio, Sr. Group).

On July 25, 2003, the Rogelio, Sr. Group filed their Answer with compulsory counterclaim.<sup>27</sup>

On August 2, 2005, the Regional Trial Court issued a Decision (which it called a “Placitum”) dismissing the Marcelino, Jr. Group’s Complaint. It ruled that the Marcelino, Jr. Group did not have a cause of action against the Rogelio, Sr. Group and that the former is estopped from questioning the assailed movement of shares of People’s Broadcasting. It also ruled that indispensable parties were not joined in their Complaint.

According to the trial court, the indispensable parties would include:

[Marcelino, Sr.] and/or his estate and/or his heirs, [Salome] and/or

<sup>25</sup> Id. at 546–603.

<sup>26</sup> Id. at 546, Complaint.

<sup>27</sup> *Rollo* (G.R. No. 177275), p. 64, Court of Appeals Decision.

her estate and/or her heirs, [Divinagracia] and/or his estate and/or his successors-in-interest, [Teresita] and/or her estate and/or her own successors-in-interest, the other [People's Broadcasting Service, Inc.] stockholders who may be actually beneficial owners and not purely nominees, all the so called nominal stockholders. . . [and] the various [People's Broadcasting Service, Inc.] Corporate Secretaries[.]”<sup>28</sup>

The Regional Trial Court granted Rogelio, Sr.'s compulsory counterclaim for moral and exemplary damages amounting to ₱25,000,000.00 and ₱5,000,000.00, respectively, reasoning that Rogelio, Sr. suffered from the besmirching of his personal and commercial reputation.<sup>29</sup>

The dispositive portion of the Regional Trial Court Decision reads:

WHEREFORE, premises duly considered, the instant “Complaint” of the plaintiffs is hereby DISMISSED for lack of merit.

The “Counterclaim” of defendant Rogelio Florete Sr. is hereby given DUE COURSE but only insofar as the claims for moral and exemplary damages are concerned. Consequently, the plaintiffs herein are hereby ordered to pay, jointly and severally, defendant Rogelio Florete Sr., the following sums, to wit:

1. TWENTY FIVE MILLION PESOS (P25,000,000.00) as and for MORAL DAMAGES; and,
2. FIVE MILLION PESOS (P5,000,000.00) as and for EXEMPLARY DAMAGES.

The “Counterclaim(s)” of the other defendants and the prayer for the recovery of attorney's fees and litigation expenses of defendant Rogelio Florete, Sr. are hereby DISMISSED likewise for lack of merit.

SO ORDERED.<sup>30</sup>

On August 15, 2005, Rogelio, Sr. filed a Motion for the immediate execution of the award of moral and exemplary damages pursuant to Rule I, Section 4<sup>31</sup> of the Interim Rules of Procedure Governing Intra-Corporate Controversies.<sup>32</sup>

On September 8, 2005, the Marcelino, Jr. Group filed before the Court

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<sup>28</sup> Id. at 504.

<sup>29</sup> Id. at 545.

<sup>30</sup> Id. The case was docketed as SCC Case No. 03-002. The *Placitum* was penned by Judge J. Cedric O. Ruiz of Branch 39, Regional Trial Court Iloilo.

<sup>31</sup> Sec. 4. Executory Nature of Decisions and Orders.—All decisions and orders issued under these Rules shall immediately be executory. No appeal or petition taken therefrom shall stay the enforcement or implementation of the decision or order, unless restrained by an appellate court. Interlocutory orders shall not be subject to appeal.

<sup>32</sup> *Rollo* (G.R. No. 177275), p. 130, Comment.

of Appeals a Petition for Review<sup>33</sup> with a prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction to deter the immediate execution of the trial court Decision awarding damages to Rogelio, Sr.<sup>34</sup> The Court of Appeals issued a temporary restraining order and, subsequently, a writ of preliminary injunction.<sup>35</sup>

In its Decision<sup>36</sup> dated March 29, 2006, the Court of Appeals denied the Marcelino, Jr. Group's Petition and affirmed the trial court Decision.<sup>37</sup> It also lifted the temporary restraining order and writ of preliminary injunction.<sup>38</sup>

The Court of Appeals ruled that the Marcelino, Jr. Group did not have a cause of action against those whom they have impleaded as defendants. It also noted that the principal obligors in or perpetrators of the assailed transactions were persons other than those in the Rogelio, Sr. Group who have not been impleaded as parties. Thus, the Court of Appeals emphasized that the following parties were indispensable to the case: People's Broadcasting; Marcelino, Sr.; Consolidated Broadcasting System, Inc.; Salome; Divinagracia; Teresita; and "other stockholders of [People's Broadcasting] to whom the shares were transferred or the nominees of the stockholders."<sup>39</sup>

The Court of Appeals further emphasized that the estates of Marcelino, Sr. and Salome had long been settled, with those in the Marcelino, Jr. Group participating (in their capacity as heirs). As the Marcelino, Jr. Group failed to act to protect their supposed interests in shares originally accruing to Marcelino, Sr. and Salome, the group is estopped from questioning the distribution of Marcelino, Sr.'s and Salome's assets.<sup>40</sup> Furthering the conclusion that the Marcelino, Jr. Group was bound by estoppel, the Court of Appeals noted that the Marcelino, Jr. Group was well aware of the matters stated in the report furnished by Sycip Gorres Velayo and Co. but failed to act on any supposed error in the report. Instead, the Marcelino, Jr. Group waited ten (10) years before filing their Complaint. In the interim, they even participated in the affairs of People's Broadcasting, voting their shares and electing members of the Board of Directors.<sup>41</sup>

On April 26, 2006, the Marcelino, Jr. Group filed a Motion for

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<sup>33</sup> The Petition was filed under Rule 43 of the Rules of Court.

<sup>34</sup> *Rollo* (G.R. No. 177275), p. 130, Comment.

<sup>35</sup> *Id.* at 109, Court of Appeals Decision.

<sup>36</sup> *Id.* at 59–86. The case was docketed as CA-G.R. SP No. 00994. The Decision was penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Arsenio Magpale and Vicente Yap of the Eighteenth Division, Court of Appeals Cebu.

<sup>37</sup> *Id.* at 83.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 67.

<sup>40</sup> *Id.* at 68–69.

<sup>41</sup> *Id.* at 70.



Reconsideration dated April 24, 2006.<sup>42</sup>

Pending resolution of the Marcelino, Jr. Group's Motion for Reconsideration, Rogelio, Sr. filed before the Regional Trial Court a Motion to resolve his earlier motion for the immediate execution of the awards of moral and exemplary damages, which was filed on August 15, 2005.<sup>43</sup> The Regional Trial Court granted the Motion in its Order dated May 18, 2006.<sup>44</sup> On May 23, 2006, a Writ of Execution was issued to enforce the award of moral and exemplary damages.<sup>45</sup>

The Marcelino, Jr. Group filed a Petition for Certiorari<sup>46</sup> before the Court of Appeals questioning the Regional Trial Court Order to immediately execute its Decision.<sup>47</sup> On June 13, 2006, the Court of Appeals issued a temporary restraining order and, subsequently, a writ of preliminary injunction.<sup>48</sup> The Court of Appeals reversed the trial court Order of immediate execution in the Decision promulgated on November 28, 2006.<sup>49</sup> It also annulled the writ of execution issued pursuant to the Order of immediate execution. Rogelio, Sr. filed a Motion for Reconsideration,<sup>50</sup> but it was denied on February 23, 2007.<sup>51</sup>

On September 15, 2006, the Court of Appeals denied the Marcelino, Jr. Group's Motion for Reconsideration dated April 24, 2006.<sup>52</sup>

Hence, on November 17, 2006, the Marcelino, Jr. Group filed the Petition<sup>53</sup> docketed as G.R. No. 174909.

Since the Court of Appeals Decision disallowed the immediate execution of the Regional Trial Court Decision, Rogelio, Sr. filed on May 7, 2007 the Petition<sup>54</sup> docketed as G.R. No. 177275.

On March 16, 2009, this court ordered the consolidation of the Petitions docketed as G.R. No. 174909 and G.R. No. 177275.

For resolution are the following issues:

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<sup>42</sup> *Rollo* (G.R. No. 174909), pp. 187–258.

<sup>43</sup> *Rollo* (G.R. No. 177275), p. 131, Comment.

<sup>44</sup> *Id.* at. 109–110.

<sup>45</sup> *Id.* at 131.

<sup>46</sup> *Id.* at 132. The Petition was filed pursuant to Rule 65 of the Rules of Court.

<sup>47</sup> *Id.* at 131–132.

<sup>48</sup> *Id.* at 132.

<sup>49</sup> The case was docketed as CA-G.R. CEB-SP No. 01818.

<sup>50</sup> *Rollo* (G.R. No. 177275), pp. 115–123.

<sup>51</sup> *Id.* at 124–125.

<sup>52</sup> *Id.* at 85–86.

<sup>53</sup> *Rollo* (G.R. No. 174909), pp. 42–159.

<sup>54</sup> *Rollo* (G.R. No. 177275), pp. 9–24.

First, whether it was proper for the Regional Trial Court to dismiss the Complaint filed by the Marcelino, Jr. Group;

Second, assuming that it was error for the Regional Trial Court to dismiss the Complaint and that the case may be decided on the merits, whether the transfers of shares assailed by the Marcelino, Jr. Group should be nullified; and

Lastly, whether the Regional Trial Court's award of moral and exemplary damages in favor of Rogelio, Sr. may be executed at this juncture of the proceedings.

The Marcelino, Jr. Group insists that they have sufficiently established causes of action accruing to them and against the Rogelio, Sr. Group.<sup>55</sup> They add that they have impleaded all indispensable parties.<sup>56</sup> Thus, they claim that it was an error for the Regional Trial Court to dismiss their Complaint. They assert that a resolution of the case on the merits must ensue.

The Marcelino, Jr. Group seeks to nullify the following transactions on the shares of stock of People's Broadcasting, as noted in the report of Sycip Gorres Velayo and Co.:

- (a) Issuance of 1,240 shares to Consolidated Broadcasting System, Inc. on September 1, 1982,
- (b) Transfer of 10 shares from Salome to Consolidated Broadcasting System, Inc. on September 1, 1982,
- (c) Issuance of 610 shares to Newsounds Broadcasting Network, Inc. on November 17, 1967,
- (d) Transfer of 610 shares from Newsounds Broadcasting Network, Inc. to Rogelio, Sr. on March 1, 1983,
- (e) Transfer of 750 shares from Consolidated Broadcasting System, Inc. to Marcelino, Sr. on March 1, 1983,
- (f) Transfer of 500 shares from Consolidated Broadcasting System, Inc. to Rogelio, Sr.,
- (g) Transfer of 680 shares from Marcelino, Sr. to the following: 370 shares to Rogelio, Sr., 270 shares to Divinagracia, 20 shares to Marcelino, Jr., and 20 shares to Teresita, and
- (h) Increase in the authorized capital stock to ₱100,000,000.00 divided into 1,000,000 shares with a par value of ₱100.00 per share on December 8, 1989, and the resulting subscriptions.<sup>57</sup>

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<sup>55</sup> *Rollo* (G.R. No. 174909), p. 1472, Petitioners' Memorandum.

<sup>56</sup> *Id.* at 1478–1480.

<sup>57</sup> *Id.* at 1553–1554.

For the issuance of 1,250 shares to Consolidated Broadcasting System, Inc., the Marcelino, Jr. Group argues that Board Resolution No. 4 dated August 5, 1982, the basis for the issuance of the 1,250 shares in favor of Consolidated Broadcasting System, Inc., was a forgery: it was simulated, unauthorized, and issued without a quorum as required under Section 25 of the Corporation Code.<sup>58</sup> They add that Salome, who allegedly transferred her 10 shares to complete the 1,250 share transfer, was already dead at the time of the alleged transfer on September 1, 1982.<sup>59</sup> The Marcelino, Jr. Group claims that no member of the Board attended the meeting referred to in Board Resolution No. 4.<sup>60</sup> They further allege that the signature of Marcelino, Sr. in Board Resolution No. 4 is a forgery.<sup>61</sup> They argue that Marcelino, Sr. could not have attended the meeting on August 5, 1982 because from July 12, 1982 to August 26, 1982,<sup>62</sup> he was confined in Gov. B. Lopez Memorial Hospital for quadriparesis and motor aphasia.<sup>63</sup> They also supplied the trial court with specimen signatures of Marcelino, Sr. to prove that the signature appearing on Board Resolution No. 4 was forged.<sup>64</sup>

The Marcelino, Jr. Group alleges that from the time Marcelino, Sr. suffered a stroke on July 12, 1982 until his death on October 3, 1990, he was no longer capable of giving consent because of his quadriparesis and motor aphasia.<sup>65</sup> As they emphasized, “[q]uadriparesis means weakness of the upper and lower extremities with spasticity and tremors. Motor aphasia means that the patient could not communicate, unable to talk, nor responds [sic] to question or simple commands.”<sup>66</sup> Thus, they conclude that all of the issuances of shares in favor of Marcelino, Sr. and all of the transfers of shares to and from Marcelino, Sr. from July 12, 1982 are void for lack of consent.

With respect to the issuance of 610 shares to Newsounds Broadcasting Network, Inc. and the subsequent transfer of 610 shares to Rogelio, Sr., the Marcelino, Jr. Group argues that there is no deed of conveyance to support the transfer and that the stock certificates representing the 610 shares are missing. They conclude that because of the absence of the stock certificates, there is no valid delivery and endorsement as required by Section 63 of the Corporation Code.<sup>67</sup> Hence, the transfer is invalid.

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<sup>58</sup> Id. at 1506.

<sup>59</sup> Id.

<sup>60</sup> Id.

<sup>61</sup> Id. at 1508.

<sup>62</sup> Id. at 1507.

<sup>63</sup> Id. at 1508.

<sup>64</sup> Id. at 1511.

<sup>65</sup> Id. at 1511–1512.

<sup>66</sup> Id. at 1508–1510. The Marcelino, Jr. Group quoted from the testimony of Dr. Matias T. Apistar, a specialist on Adult Cardiology, Heart Diseases, Cardiac Rehabilitation, and Echocardiography, and the attending physician of Marcelino, Sr.

<sup>67</sup> Id. at 1531–1532.

SEC. 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*

Regarding the increase in the authorized capital stock of People's Broadcasting, the Marcelino, Jr. Group argues that the increase was procured by fraud because it was made "by the new Board of Directors who were elected by stockholders who were transferees of the illegal, fraudulent and anomalous transfers, and therefore have no power and authority to procure such increase."<sup>68</sup> They also pray that the subscriptions to the increase be nullified.<sup>69</sup>

After a declaration that the issuances and transfers are void, the Marcelino, Jr. Group prays that the capital structure of People's Broadcasting System be corrected to reflect the following:<sup>70</sup>

Beneficial Stockholder	No. of Shares	%
Marcelino Florete, Sr.	660	81.48
Salome Florete	100	12.35
Santiago Divinagracia	50	6.17
Total	810	100.00

The Marcelino, Jr. Group further claims that the award of moral and exemplary damages is erroneous.<sup>71</sup> They add that the amounts of ₱25,000,000.00 as moral damages and ₱5,000,000.00 as exemplary damages are excessive.<sup>72</sup>

The Rogelio, Sr. Group seeks the denial of the Petition filed by the Marcelino, Jr. Group, claiming that it raises factual questions that may not be taken cognizance of in a petition for review on certiorari under Rule 45.<sup>73</sup>

They further argue that the Marcelino, Jr. Group has no cause of action against them.<sup>74</sup> They insist that indispensable parties have not been

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*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 showing 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.

No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation.

<sup>68</sup> Id. at 1537–1538.

<sup>69</sup> Id. at 576–577, Complaint. The Marcelino, Jr., Group enumerated the subscribers to the increase as the following: Elsa Marie Divinagracia, Ruth Marie Divinagracia, Llana Grace Divinagracia, Ricardo Divinagracia, Fe Emily Divinagracia, Liza Roquero, Tessie Bañares, Santiago Divinagracia, Jerry Lucero, Lorenzo Caperonce, Estarella Mirasol, Francisco Jamili, Emmanuel Billones, Ignacio Debuque, Oscar Leo Billena, Rodrigo Jagorin, Rodrigo Martirizar, Ricardo Badilles, and Marie Julie Sancho.

<sup>70</sup> Id. at 597 and 601.

<sup>71</sup> Id. at 1540, Petitioners' Memorandum.

<sup>72</sup> Id. at 1549.

<sup>73</sup> Id. at 1423.

<sup>74</sup> Id. at 1426.

impleaded<sup>75</sup> and that the Marcelino Jr. Group's claims should have been raised during the settlement of the estates of deceased Spouses Marcelino, Sr. and Salome Florete.<sup>76</sup> They also argue that the Marcelino, Jr. Group is already estopped from questioning Sycip Gorres Velayo and Co.'s report because they allowed 10 years to lapse before questioning the truthfulness of the report. They add that the Marcelino, Jr. Group's members have been voting their shares since 1963 without making any reservation.<sup>77</sup>

In G.R. No. 177275, Rogelio, Sr. argues that the Court of Appeals erred in disallowing the immediate execution of the Regional Trial Court Decision. He argues that the Petition filed by the Marcelino, Jr. Group before the Court of Appeals should not have been accepted because Rule 65 petitions require that there no longer be any appeal nor any plain, speedy, and adequate remedy in the ordinary course of law.<sup>78</sup> He alleges that when the Petition was filed by the Marcelino, Jr. Group, there was still a pending appeal before the Court of Appeals to resolve the main case.<sup>79</sup> Rogelio, Sr. adds that the filing of a new petition despite the pendency of the main case is a violation of the rule against forum shopping.<sup>80</sup>

## I

The sufficiency of the Marcelino, Jr. Group's plea for relief, through their Complaint for Declaration of Nullity of Issuances, Transfers and Sale of Shares in People's Broadcasting Service, Inc. and All Posterior Subscriptions and Increases thereto with Damages,<sup>81</sup> hinges on a characterization of the suit or action they initiated. This characterization requires a determination of the cause of action through which the Marcelino, Jr. Group came to court for relief. It will, thus, clarify the parties who must be included in their action and the procedural and substantive requirements they must satisfy if their action is to prosper.

A stockholder suing on account of wrongful or fraudulent corporate actions (undertaken through directors, associates, officers, or other persons) may sue in any of three (3) capacities: as an individual; as part of a group or specific class of stockholders; or as a representative of the corporation.

*Villamor v. Umale*<sup>82</sup> distinguished individual suits from class or representative suits:

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<sup>75</sup> Id. at 1427.

<sup>76</sup> Id. at 1423.

<sup>77</sup> Id. at 1431.

<sup>78</sup> *Rollo* (G.R. No. 177275), pp. 14–15, Petition for Review.

<sup>79</sup> Id. at 14.

<sup>80</sup> Id. at 18.

<sup>81</sup> *Rollo* (G.R. 174909), p. 546.

<sup>82</sup> G.R. Nos. 172843, 172881, September 24, 2014, 736 SCRA 325 [Per J. Leonen, Second Division].

Individual suits are filed when the cause of action belongs to the individual stockholder personally, and not to the stockholders as a group or to the corporation, e.g., denial of right to inspection and denial of dividends to a stockholder. If the cause of action belongs to a group of stockholders, such as when the rights violated belong to preferred stockholders, a class or representative suit may be filed to protect the stockholders in the group.<sup>83</sup>

*Villamor* further explained that a derivative suit “is an action filed by stockholders to enforce a corporate action.”<sup>84</sup> A derivative suit, therefore, concerns “a wrong to the corporation itself.”<sup>85</sup> The real party in interest is the corporation, not the stockholders filing the suit. The stockholders are technically nominal parties but are nonetheless the active persons who pursue the action for and on behalf of the corporation.

Remedies through derivative suits are not expressly provided for in our statutes—more specifically, in the Corporation Code and the Securities Regulation Code—but they are “impliedly recognized when the said laws make corporate directors or officers liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties.”<sup>86</sup> They are intended to afford reliefs to stockholders in instances where those responsible for running the affairs of a corporation would not otherwise act:

However, in cases of mismanagement where the wrongful acts are committed by the directors or trustees themselves, a stockholder or member may find that he has no redress because the former are vested by law with the right to decide whether or not the corporation should sue, and they will never be willing to sue themselves. The corporation would thus be helpless to seek remedy. Because of the frequent occurrence of such a situation, the common law gradually recognized the right of a stockholder to sue on behalf of a corporation in what eventually became known as a “derivative suit.” It has been proven to be an effective remedy of the minority against the abuses of management. Thus, an individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stock in order to protect or vindicate corporate rights, whenever officials of the corporation refuse to sue or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as the nominal party, with the corporation as the party in interest.<sup>87</sup>

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<sup>83</sup> Id. at 348, citing *Cua, Jr. v. Tan*, 622 Phil. 661 (2009) [Per J. Chico-Nazario, Third Division], in turn citing 1 J. CAMPOS, JR. AND M. C. L. CAMPOS, *THE CORPORATION CODE: COMMENTS, NOTES AND SELECTED CASES* 819 (1990 ed.).

<sup>84</sup> Id. at 340, citing *Hi-Yield Realty, Incorporated v. Court of Appeals*, 608 Phil. 350, 358 (2009) [Per J. Quisumbing, Second Division], in turn citing *R.N. Symaco Trading Corporation v. Santos*, 504 Phil. 573, 589 (2005) [Per J. Callejo, Sr., Second Division].

<sup>85</sup> *Cua, Jr. v. Tan*, 622 Phil. 661, 715 (2009) [Per J. Chico-Nazario, Third Division], citing I JOSE CAMPOS, JR. AND MARIA CLARA L. CAMPOS, *THE CORPORATION CODE: COMMENTS, NOTES AND SELECTED CASES* 819–820 (1990 ed.).

<sup>86</sup> Id. at 721.

<sup>87</sup> Id. at 715–716.

The distinction between individual and class/representative suits on one hand and derivative suits on the other is crucial. These are not discretionary alternatives. *The fact that stockholders suffer from a wrong done to or involving a corporation does not vest in them a sweeping license to sue in their own capacity.* The recognition of derivative suits as a vehicle for redress distinct from individual and representative suits is an acknowledgment that certain wrongs may be addressed only through acts brought for the corporation:

Although in most every case of wrong to the corporation, each stockholder is necessarily affected because the value of his interest therein would be impaired, this fact of itself is not sufficient to give him an individual cause of action since the corporation is a person distinct and separate from him, and can and should itself sue the wrongdoer.<sup>88</sup>

In *Asset Privatization Trust v. Court of Appeals*,<sup>89</sup> the reasons for disallowing a direct individual suit were further explained:

The reasons given for not allowing direct individual suit are:

(1) . . . “the universally recognized doctrine that a stockholder in a corporation has no title legal or equitable to the corporate property; that both of these are in the corporation itself for the benefit of the stockholders.” In other words, to allow shareholders to sue separately would conflict with the separate corporate entity principle;

(2) . . . that the prior rights of the creditors may be prejudiced. Thus, our Supreme Court held in the case of *Evangelista v. Santos*, that ‘the stockholders may not directly claim those damages for themselves for that would result in the appropriation by, and the distribution among them of part of the corporate assets before the dissolution of the corporation and the liquidation of its debts and liabilities, something which cannot be legally done in view of Section 16 of the Corporation Law. . .’;

(3) the filing of such suits would conflict with the duty of the management to sue for the protection of all concerned;

(4) it would produce wasteful multiplicity of suits; and

(5) it would involve confusion in ascertaining the effect of partial recovery by an individual on the damages recoverable by the corporation for the same act.<sup>90</sup>

The avenues for relief are, thus, mutually exclusive. *The*

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<sup>88</sup> Id. at 715, *citing* I JOSE CAMPOS, JR. AND MARIA CLARA L. CAMPOS, *THE CORPORATION CODE: COMMENTS, NOTES AND SELECTED CASES* 819–820 (1990 ed.).

<sup>89</sup> 360 Phil. 768 (1998) [Per J. Kapunan, Third Division].

<sup>90</sup> Id. at 805–806, *citing* III A. F. AGBAYANI, *COMMERCIAL LAW OF THE PHILIPPINES* 565–566.

*determination of the appropriate remedy hinges on the object of the wrong done.* When the object is a specific stockholder or a definite class of stockholders, an individual suit or class/representative suit *must* be resorted to. When the object of the wrong done is the corporation itself or “the whole body of its stock and property without any severance or distribution among individual holders,”<sup>91</sup> it is a derivative suit that a stockholder *must* resort to. In *Cua, Jr. v. Tan*.<sup>92</sup>

Indeed, the Court notes American jurisprudence to the effect that a derivative suit, on one hand, and individual and class suits, on the other, are mutually exclusive, viz.:

As the Supreme Court has explained: “A shareholder's derivative suit seeks to recover for the benefit of the corporation and its whole body of shareholders when injury is caused to the corporation that may not otherwise be redressed because of failure of the corporation to act. Thus, ‘the action is derivative, i.e., in the corporate right, if the gravamen of the complaint is injury to the corporation, or to the whole body of its stock and property without any severance or distribution among individual holders, or it seeks to recover assets for the corporation or to prevent the dissipation of its assets.’” In contrast, “a direct action [is one] filed by the shareholder individually (or on behalf of a class of shareholders to which he or she belongs) for injury to his or her interest as a shareholder. . . . [T]he two actions are mutually exclusive: i.e., the right of action and recovery belongs to either the shareholders (direct action) or the corporation (derivative action).”

Thus, in *Nelson v. Anderson*, the minority shareholder alleged that the other shareholder of the corporation negligently managed the business, resulting in its total failure. The appellate court concluded that the plaintiff could not maintain the suit as a direct action: “Because the gravamen of the complaint is injury to the whole body of its stockholders, it was for the corporation to institute and maintain a remedial action. A derivative action would have been appropriate if its responsible officials had refused or failed to act.” The court went on to note that the damages shown at trial were the loss of corporate profits. Since “[s]hareholders own neither the property nor the earnings of the corporation,” any damages that the plaintiff alleged that resulted from such loss of corporate profits “were incidental to the injury to the corporation.”<sup>93</sup> (Emphasis supplied, citations omitted)

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<sup>91</sup> *Cua, Jr. v. Tan*, 622 Phil. 661, 717 (2009) [Per J. Chico-Nazario, Third Division], citing *Oakland Raiders v. National Football League*, 131 Cal.App.4th 621, 32 Cal.Rptr.3d 266, Cal. App. 6 Dist., 2005, 28 July 2005.

<sup>92</sup> 622 Phil. 661 (2009) [Per J. Chico-Nazario, Third Division].

<sup>93</sup> *Id.* at 717–718, citing *Oakland Raiders v. National Football League*, 131 Cal.App.4th 621, 32 Cal.Rptr.3d 266, Cal. App. 6 Dist., 2005, 28 July 2005.



*Villamor* recalls the requisites for filing derivative suits:

Rule 8, Section 1 of the Interim Rules of Procedure for Intra Corporate Controversies (Interim Rules) provides the five (5) requisites for filing derivative suits:

*SECTION 1. Derivative action.*—A stockholder or member may bring an action in the name of a corporation or association, as the case may be, *provided*, that:

- (1) He was a stockholder or member at the time the acts or transactions subject of the action occurred and at the time the action was filed;
- (2) He exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires;
- (3) No appraisal rights are available for the act or acts complained of; and
- (4) The suit is not a nuisance or harassment suit.

In case of nuisance or harassment suit, the court shall forthwith dismiss the case.

The fifth requisite for filing derivative suits, while not included in the enumeration, is implied in the first paragraph of Rule 8, Section 1 of the Interim Rules: The action brought by the stockholder or member must be “in the name of [the] corporation or association. . . .” This requirement has already been settled in jurisprudence.

Thus, in *Western Institute of Technology, Inc., et al. v. Salas, et al.*, this court said that “[a]mong the basic requirements for a derivative suit to prosper is that the minority shareholder who is suing for and on behalf of the corporation must allege in his complaint before the proper forum that he is suing on a derivative cause of action on behalf of the corporation and all other shareholders similarly situated who wish to join [him].” . . .

Moreover, it is important that the corporation be made a party to the case.<sup>94</sup> (Citations omitted)

## II

The greater number of cases that sustained stockholders’ recourse to derivative suits involved corporate acts amounting to mismanagement by either the corporation’s directors or officers in relations to third persons. Several cases serve as examples.

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<sup>94</sup> *Villamor v. Umale*, G.R. Nos. 172843, 172881, September 24, 2014, 736 SCRA 325, 341–343 [Per J. Leonen, Second Division].

*Hi-Yield Realty v. Court of Appeals*<sup>95</sup> affirmed the Regional Trial Court's and Court of Appeals' characterization of a Petition for Annulment of Real Estate Mortgage and Foreclosure Sale<sup>96</sup> as a derivative suit. The Petition was initiated by private respondent Roberto H. Torres, a stockholder, on behalf of the corporation Honorio Torres & Sons, Inc. Petitioner Hi-Yield Realty, Inc. was among the defendants to the Petition, along with the related parties, Leonora, Ma. Theresa, Glenn, and Stephanie, all surnamed Torres, as well as the Registers of Deeds of Marikina and of Quezon City. Against Hi-Yield Realty, Inc.'s claims, this court sustained the respondent's position that the Petition was "primarily a derivative suit to redress the alleged unauthorized acts of its corporate officers and major stockholders in connection with the lands."<sup>97</sup>

*Cua, Jr.* considered two corporate acts to be valid objects of a derivative suit. The first was a resolution of the Board of Directors of the corporation Philippine Racing Club, Inc. to acquire up to 100% of the common shares of another corporation, JTH Davies Holdings, Inc., as well as to appoint Santiago Cua, Jr. "to act as attorney-in-fact and proxy who could vote all the shares of [Philippine Racing Club, Inc.] in [JTH Davies Holdings, Inc.], as well as nominate, appoint, and vote into office directors and/or officers during regular and special stockholders meetings of [JTH Davies Holdings, Inc.]."<sup>98</sup> The second was another resolution of Philippine Racing Club, Inc.'s Board of Directors "approving the property-for-shares exchange between P[hilippine] R[acing] C[lub], I[nc]. and [JTH Davies Holdings, Inc.]."<sup>99</sup>

In *Cua, Jr.*, the derivative suit grounded on the first was dismissed by this court for being moot and academic.<sup>100</sup> The suit grounded on the second was similarly dismissed for failure to comply with one of the requisites for instituting a derivative suit. The plaintiffs "made no mention at all of appraisal rights, which could or could not have been available to them[.]" thereby violating Rule 8, Section 1 of the Interim Rules of Procedure for Intra-Corporate Controversies.<sup>101</sup>

As with *Hi-Yield Realty* and *Cua, Go v. Distinction Properties Development and Construction, Inc.*<sup>102</sup> concerned a corporate action taken in relation to a third person.

Petitioners Philip L. Go, Pacifico Q. Lim and Andrew Q. Lim filed

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<sup>95</sup> 608 Phil. 350 (2009) [Per J. Quisumbing, Second Division].

<sup>96</sup> Id. at 354.

<sup>97</sup> Id. at 356.

<sup>98</sup> 622 Phil. 661, 719 (2009) [Per J. Chico-Nazario, Third Division].

<sup>99</sup> Id. at 726.

<sup>100</sup> Id. at 719.

<sup>101</sup> Id. at 722.

<sup>102</sup> 686 Phil. 1160 (2012) [Per J. Mendoza, Third Division].

before the Housing and Land Use Regulatory Board a Complaint, which they claimed was one for specific performance intended to compel the developer of Phoenix Heights Condominium, Distinction Properties Development and Construction, Inc. (Distinction Properties), to fulfill its contractual obligations. The Complaint was filed in the wake of an agreement entered into by Distinction Properties with the condominium corporation Phoenix Heights Condominium Corporation (PHCC). PHCC “approved a settlement offer from [Distinction Properties] for the set-off of the latter’s association dues arrears with the assignment [from Distinction Properties] of title over [two saleable commercial units/spaces originally held by Distinction Properties] and their conversion into common areas.”<sup>103</sup>

This court clarified that the true purpose of the petitioners’ action was not to compel Distinction Properties to fulfill its contractual obligations. Instead, “petitioners [we]re actually seeking to nullify and invalidate the duly constituted acts of PHCC - the April 29, 2005 Agreement entered into by PHCC with DPDCI and its Board Resolution which authorized the acceptance of the proposed offsetting/settlement of DPDCI’s indebtedness and approval of the conversion of certain units from saleable to common areas.” This court thereby concluded that “the cause of action rightfully pertains to PHCC [and that] [p]etitioners cannot exercise the same except through a derivative suit.”<sup>104</sup>

The prevalence of derivative suits arising from corporate actions taken in relation to third persons is to be expected. After all, it is easier to perceive the wrong done to a corporation when third persons unduly gain an advantage. However, this does not mean that derivative suits cannot arise with respect to conflicts among a corporation’s directors, officers, and stockholders.

*Ching and Wellington v. Subic Bay Golf and Country Club*<sup>105</sup> sustained the Regional Trial Court’s and Court of Appeals’ characterization of the Complaint filed by stockholders against officers of the corporation as a derivative suit. Nestor Ching and Andrew Wellington filed a Complaint in their own names and in their right as individual stockholders assailing an amendment introduced into Subic Bay Golf and Country Club’s articles of incorporation, which supposedly “takes away the right of the shareholders to participate in the pro-rata distribution of the assets of the corporation after its dissolution.”<sup>106</sup> They anchored their action on Section 5(a) of Presidential Decree No. 902-A.<sup>107</sup> They claimed that this statutory provision “allows any

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<sup>103</sup> Id. at 1166.

<sup>104</sup> Id. at 1178.

<sup>105</sup> G.R. No. 174353, September 10, 2014, 734 SCRA 569 [Per J. Leonardo-De Castro, First Division].

<sup>106</sup> Id. at 573.

<sup>107</sup> Sec. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

stockholder to file a complaint against the Board of Directors for employing devices or schemes amounting to fraud and misrepresentation which is detrimental to the interest of the public and/or the stockholders.”<sup>108</sup>

This court did not sustain Nestor Ching’s and Andrew Wellington’s claim of a right to sue in their own capacity. Concluding that the petitioners’ action was a derivative suit, this court explained:

The reliefs sought in the Complaint, namely that of enjoining defendants from acting as officers and Board of Directors of the corporation, the appointment of a receiver, and the prayer for damages in the amount of the decrease in the value of the shares of stock, clearly show that the Complaint was filed to curb the alleged mismanagement of [Subic Bay Gold and Country Club]. *The causes of action pleaded by petitioners do not accrue to a single shareholder or a class of shareholders but to the corporation itself.*<sup>109</sup> (Emphasis supplied)

We are mindful that in 1979, in *Gamboa v. Victoriano*,<sup>110</sup> this court characterized an action to nullify the sale of 823 unissued shares on the ground of violating the plaintiffs’ pre-emptive rights and in violation of the voting requirement for the Board of Directors as *not* a derivative suit. This court characterized the action as one in which “the plaintiffs are alleging and vindicating their own individual interests or prejudice, and not that of the corporation.”<sup>111</sup>

This pronouncement cannot be considered as a binding precedent for holding actions of the sort filed by the plaintiffs therein to not be derivative suit. This point in *Gamboa* was mere obiter dictum. The main issue in *Gamboa* was the validity of the trial court’s denial of the Motion to Dismiss filed by four of the seven defendants after the plaintiffs entered into a compromise agreement with the three other defendants. The resolution of this issue was contingent on the determination of whether the compromise amounted to the plaintiff’s waiver and estoppel for having conceded the validity of the sale. Besides, this court itself acknowledged that the statement it made characterizing the action brought by the plaintiffs was premature. Immediately after saying that “the plaintiffs are alleging and vindicating their own individual interests or prejudice, and not that of the corporation[,]”<sup>112</sup> this court stated: “At any rate, it is yet too early in the

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(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.

<sup>108</sup> *Ching and Wellington v. Subic Bay Golf and Country Club*, G.R. No. 174353, September 10, 2014, 734 SCRA 569, 580 [Per J. Leonardo-De Castro, First Division].

<sup>109</sup> *Id.* at 584.

<sup>110</sup> 179 Phil. 36 (1979) [Per J. Concepcion, Jr., Second Division].

<sup>111</sup> *Id.* at 43.

<sup>112</sup> *Id.* at 43.

proceedings since the issues have not been joined.”<sup>113</sup>

### III

In this case, the Marcelino, Jr. Group anchored their Complaint on violations of and liabilities arising from the Corporation Code, specifically: Section 23<sup>114</sup> (on corporate decision-making being vested in the board of directors), Section 25<sup>115</sup> (quorum requirement for the transaction of corporate business), Sections 39<sup>116</sup> and 102<sup>117</sup> (both on stockholders’ preemptive rights), Section 62<sup>118</sup> (stipulating the consideration for which stocks

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<sup>113</sup> Id. The entirety of the relevant portion in the Decision reads: “The petitioners further contend that the proper remedy of the plaintiffs would be to institute a derivative suit against the petitioners in the name of the corporation in order to secure a binding relief after exhausting all the possible remedies available within the corporation.

“An individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stock in order to protect or vindicate corporate rights, whenever the officials of the corporation refuse to sue, or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as a nominal party, with the corporation as the real party in interest. In the case at bar, however, the plaintiffs are alleging and vindicating their own individual interests or prejudice, and not that of the corporation. At any rate, it is yet too early in the proceedings since the issues have not been joined. Besides, misjoinder of parties is not a ground to dismiss an action” (Id.).

<sup>114</sup> SEC. 23. *The Board of Directors or Trustees.*—Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified. (28a)

Every director must own at least one (1) share of the capital stock of the corporation of which he is a director, which share shall stand in his name on the books of the corporation. Any director who ceases to be the owner of at least one (1) share of the capital stock of the corporation of which he is a director shall thereby cease to be a director. Trustees of non-stock corporations must be members thereof. A majority of the directors or trustees of all corporations organized under this Code must be residents of the Philippines.

<sup>115</sup> SEC. 25. *Corporate Officers. Quorum.*—Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the by-laws. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time.

The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and the by-laws of the corporation. Unless the articles of incorporation or the by-laws provide for a greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is a quorum shall be valid as a corporate act, except for the election of officers which shall require the vote of a majority of all the members of the board.

Directors or trustees cannot attend or vote by proxy at board meetings.

<sup>116</sup> SEC. 39. *Power to Deny Pre-emptive Right.*—All stockholders of a stock corporation shall enjoy preemptive right to subscribe to all issues or disposition of shares of any class, in proportion to their respective shareholdings, unless such right is denied by the articles of incorporation or an amendment thereto: Provided, That such pre-emptive right shall not extend to shares to be issued in compliance with laws requiring stock offerings or minimum stock ownership by the public; or to shares to be issued in good faith with the approval of the stockholders representing two-thirds (2/3) of the outstanding capital stock, in exchange for property needed for corporate purposes or in payment of a previously contracted debt.

<sup>117</sup> SEC. 102. *Pre-emptive Right in Close Corporations.*—The pre-emptive right of stockholders in close corporations shall extend to all stock to be issued, including reissuance of treasury shares, whether for money or for property or personal services, or in payment of corporate debts, unless the articles of incorporation provide otherwise.

<sup>118</sup> SEC. 62. *Consideration for stocks.*—Stocks shall not be issued for a consideration less than the par or issued price thereof. Consideration for the issuance of stock may be any or a combination of any two

must be issued), Section 63<sup>119</sup> (stipulating that no transfer of shares “shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation”), and Section 65<sup>120</sup> (on liabilities of directors and officers “to the corporation and its creditors” for the issuance of watered stocks) in relation to provisions in People’s Broadcasting’s Articles of Incorporation and By-Laws as regards conditions for issuances of and subscription to shares. The Marcelino, Jr. Group ultimately prays that People’s Broadcasting’s entire capital structure be reconfigured to reflect a status quo ante.<sup>121</sup>

As with *Ching and Wellington*, the actions being assailed by the Marcelino, Jr. Group pertain to parties that are not extraneous to People’s Broadcasting. They assail and seek to nullify acts taken by various iterations of People’s Broadcasting’s Board of Directors. All these acts and incidents concern the capital structure of People’s Broadcasting. These acts reconfigured, through redistribution and enlargement, the structure of People’s Broadcasting’s equity ownership. These acts also admitted into People’s Broadcasting new equity holders such as Consolidated

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or more of the following:

1. Actual cash paid to the corporation;
2. Property, tangible or intangible, actually received by the corporation and necessary or convenient for its use and lawful purposes at a fair valuation equal to the par or issued value of the stock issued;
3. Labor performed for or services actually rendered to the corporation;
4. Previously incurred indebtedness of the corporation;
5. Amounts transferred from unrestricted retained earnings to stated capital; and
6. Outstanding shares exchanged for stocks in the event of reclassification or conversion.

Where the consideration is other than actual cash, or consists of intangible property such as patents of copyrights, the valuation thereof shall initially be determined by the incorporators or the board of directors, subject to approval by the Securities and Exchange Commission.

Shares of stock shall not be issued in exchange for promissory notes or future service.

The same considerations provided for in this section, insofar as they may be applicable, may be used for the issuance of bonds by the corporation.

The issued price of no-par value shares may be fixed in the articles of incorporation or by the board of directors pursuant to authority conferred upon it by the articles of incorporation or the by-laws, or in the absence thereof, by the stockholders representing at least a majority of the outstanding capital stock at a meeting duly called for the purpose.

<sup>119</sup> SEC. 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.

No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation.

<sup>120</sup> SEC. 65. *Liability of directors for watered stocks*.—Any director or officer of a corporation consenting to the issuance of stocks for a consideration less than its par or issued value or for a consideration in any form other than cash, valued in excess of its fair value, or who, having knowledge thereof, does not forthwith express his objection in writing and file the same with the corporate secretary, shall be solidarily, liable with the stockholder concerned to the corporation and its creditors for the difference between the fair value received at the time of issuance of the stock and the par or issued value of the same.

<sup>121</sup> *Rollo* (G.R. No. 174909), p. 601. That is, situations as they were “before the liquidation of the estates of the late Marcelino, Sr. and Salome and before the exercise of pre-emptive rights by the beneficial stockholders” (Id.).

Broadcasting System, Inc. and Newsounds Broadcasting Network, Inc.

As *Ching and Wellington* exemplifies, the action should be a proper derivative suit even if the assailed acts do not pertain to a corporation's transactions with third persons. *Cua, Jr.* established that the pivotal consideration is whether the wrong done as well as the cause of action arising from it accrues to the corporation itself or to the whole body of its stockholders. *Ching and Wellington* states that if "[t]he causes of action pleaded . . . do not accrue to a single shareholder or a class of shareholders but to the corporation itself,"<sup>122</sup> the action should be deemed a derivative suit. Also, in *Go*, an action "seeking to nullify and invalidate the duly constituted acts [of a corporation]" entails a cause of action that "rightfully pertains to [the corporation itself and which stockholders] cannot exercise . . . except through a derivative suit."<sup>123</sup>

These are the same conditions in this case. What the Marcelino, Jr. Group asks is the complete reversal of a number of corporate acts undertaken by People's Broadcasting's different boards of directors. These boards supposedly engaged in outright fraud or, at the very least, acted in such a manner that amounts to wanton mismanagement of People's Broadcasting's affairs. The ultimate effect of the remedy they seek is the reconfiguration of People's Broadcasting's capital structure.

The remedies that the Marcelino, Jr. Group seeks are for People's Broadcasting itself to avail. Ordinarily, these reliefs may be unavailing because objecting stockholders such as those in the Marcelino, Jr. Group do not hold the controlling interest in People's Broadcasting. This is precisely the situation that the rule permitting derivative suits contemplates: minority shareholders having no other recourse "whenever the directors or officers of the corporation refuse to sue to vindicate the rights of the corporation or are the ones to be sued and are in control of the corporation."<sup>124</sup>

The Marcelino, Jr. Group points to violations of specific provisions of the Corporation Code that supposedly attest to how their rights as stockholders have been besmirched. However, this is not enough to sustain a claim that the Marcelino, Jr. Group initiated a valid individual or class suit. To reiterate, whether stockholders suffer from a wrong done to or involving a corporation does not readily vest in them a sweeping license to sue in their own capacity.

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<sup>122</sup> *Ching and Wellington v. Subic Bay Golf and Country Club*, G.R. No. 174353, September 10, 2014, 734 SCRA 569, 584 [Per J. Leonardo-De Castro, First Division].

<sup>123</sup> *Go v. Distinction Properties Development and Construction, Inc.*, 686 Phil. 1160, 1174 (2012) [Per J. Mendoza, Third Division].

<sup>124</sup> *Villamor v. Umale*, G.R. Nos. 172843, 172881, September 24, 2014, 736 SCRA 325, 340 [Per J. Leonen, Second Division].

The specific provisions adverted to by the Marcelino, Jr. Group signify alleged wrongdoing committed against the corporation itself and not uniquely to those stockholders who now comprise the Marcelino, Jr. Group. A violation of Sections 23 and 25 of the Corporation Code—on how decision-making is vested in the board of directors and on the board’s quorum requirement—implies that a decision was wrongly made for the entire corporation, not just with respect to a handful of stockholders. Section 65 specifically mentions that a director’s or officer’s liability for the issuance of watered stocks in violation of Section 62 is solidary “*to the corporation and its creditors,*” not to any specific stockholder. Transfers of shares made in violation of the registration requirement in Section 63 are invalid and, thus, enable the corporation to impugn the transfer. Notably, those in the Marcelino, Jr. Group have not shown any specific interest in, or unique entitlement or right to, the shares supposedly transferred in violation of Section 63.

Also, the damage inflicted upon People’s Broadcasting’s individual stockholders, if any, was indiscriminate. It was not unique to those in the Marcelino, Jr. Group. It pertained to “the whole body of [People’s Broadcasting’s] stock.”<sup>125</sup> Accordingly, it was upon People’s Broadcasting itself that the causes of action now claimed by the Marcelino Jr. Group accrued. While stockholders in the Marcelino, Jr. Group were permitted to seek relief, they should have done so not in their unique capacity as individuals or as a group of stockholders but in place of the corporation itself through a derivative suit. As they, instead, sought relief in their individual capacity, they did so bereft of a cause of action. Likewise, they did so without even the slightest averment that the requisites for the filing of a derivative suit, as spelled out in Rule 8, Section 1 of the Interim Rules of Procedure for Intra-Corporate Controversies, have been satisfied. Since the Complaint lacked a cause of action and failed to comply with the requirements of the Marcelino, Jr. Group’s vehicle for relief, it was only proper for the Complaint to have been dismissed.

#### IV

Erroneously pursuing a derivative suit as a class suit not only meant that the Marcelino, Jr. Group lacked a cause of action; it also meant that they failed to implead an indispensable party.

In derivative suits, the corporation concerned must be impleaded as a party. As explained in *Asset Privatization Trust*:

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<sup>125</sup> To paraphrase *Oakland Raiders v. National Football League*, 131 Cal.App.4th 621, 32 Cal.Rptr.3d 266, Cal. App. 6 Dist., 2005, 28 July 2005, as cited in *Cua, Jr. v. Tan*, 622 Phil. 661, 717 (2009) [Per J. Chico-Nazario, Third Division].



Not only is the corporation an indispensable party, but it is also the present rule that it must be served with process. The reason given is that the judgment must be made binding upon the corporation in order that the corporation may get the benefit of the suit and may not bring a subsequent suit against the same defendants for the same cause of action. In other words the corporation must be joined as party because it is its cause of action that is being litigated and because judgment must be a *res adjudicata* [sic] against it.<sup>126</sup>

We have already discussed *Go* where this court concluded that an action brought by three individual stockholders was, in truth, a derivative suit. There, this court further explained that a case cannot prosper when the proper party is not impleaded:

As it is clear that the acts being assailed are those of PHHC, this case cannot prosper for failure to implead the proper party, PHCC.

An indispensable party is defined as one who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest. In the recent case of *Nagkakaisang Lakas ng Manggagawa sa Keihin (NLMK-OLALIA-KMU) v. Keihin Philippines Corporation*, the Court had the occasion to state that:

Under Section 7, Rule 3 of the Rules of Court, “parties in interest without whom no final determination can be had of an action shall be joined as plaintiffs or defendants.” If there is a failure to implead an indispensable party, any judgment rendered would have no effectiveness. It is “precisely ‘when an indispensable party is not before the court (that) an action should be dismissed.’” The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even to those present.” The purpose of the rules on joinder of indispensable parties is a complete determination of all issues not only between the parties themselves, but also as regards other persons who may be affected by the judgment. A decision valid on its face cannot attain real finality where there is want of indispensable parties.

Similarly, in the case of *Plasabas v. Court of Appeals*, the Court held that a final decree would necessarily affect the rights of indispensable parties so that the Court could not proceed without their presence. In support thereof, the Court in *Plasabas* cited the following authorities, thus:

The general rule with reference to the making of parties in a civil action requires the joinder of all indispensable parties under any and all conditions, their presence being a *sine qua non* of the exercise of judicial power. For this reason, our Supreme Court has held that

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<sup>126</sup> *Asset Privatization Trust v. Court of Appeals*, 360 Phil. 768, 805–806 (1998) [Per J. Kapunan, Third Division], citing III A. F. AGBAYANI, COMMERCIAL LAW OF THE PHILIPPINES 565–566.

when it appears of record that there are other persons interested in the subject matter of the litigation, who are not made parties to the action, it is the duty of the court to suspend the trial until such parties are made either plaintiffs or defendants. x x x Where the petition failed to join as party defendant the person interested in sustaining the proceeding in the court, the same should be dismissed. x x x When an indispensable party is not before the court, the action should be dismissed.

Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants. The burden of procuring the presence of all indispensable parties is on the plaintiff. The evident purpose of the rule is to prevent the multiplicity of suits by requiring the person arresting a right against the defendant to include with him, either as co-plaintiffs or as co-defendants, all persons standing in the same position, so that the whole matter in dispute may be determined once and for all in one litigation.

From all indications, PHCC is an indispensable party and should have been impleaded, either as a plaintiff or as a defendant, in the complaint filed before the HLURB as it would be directly and adversely affected by any determination therein. To belabor the point, the causes of action, or the acts complained of, were the acts of PHCC as a corporate body[.]<sup>127</sup> (Citations omitted)

## V

There are two consequences of a finding on appeal that indispensable parties have not been joined. First, all subsequent actions of the lower courts are null and void for lack of jurisdiction.<sup>128</sup> Second, the case should be remanded to the trial court for the inclusion of indispensable parties. It is only upon the plaintiff's refusal to comply with an order to join indispensable parties that the case may be dismissed.<sup>129</sup>

All subsequent actions of lower courts are void as to both the absent and present parties.<sup>130</sup> To reiterate, the inclusion of an indispensable party is a *jurisdictional* requirement:

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<sup>127</sup> *Go v. Distinction Properties Development and Construction, Inc.*, 686 Phil. 1160, 1175–1177 (2012) [Per J. Mendoza, Third Division].

<sup>128</sup> *Arcelona v. Court of Appeals*, 345 Phil. 250, 267–268 (1997) [Per J. Panganiban, Third Division]. *See also People of the Philippines v. Go*, G.R. No. 201644, September 24, 2014, 736 SCRA 501, 506–507 [Per J. Perlas-Bernabe, First Division].

<sup>129</sup> *Divinagracia v. Parilla*, G.R. No. 196750, March 11, 2015 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/march2015/196750.pdf>> [Per J. Perlas-Bernabe, First Division].

<sup>130</sup> *Arcelona v. Court of Appeals*, 345 Phil. 250, 267–268 (1997) [Per J. Panganiban, Third Division]. *See also People of the Philippines v. Go*, G.R. No. 201644, September 24, 2014, 736 SCRA 501, 506 [Per J. Perlas-Bernabe, First Division].

While the failure to implead an indispensable party is not per se a ground for the dismissal of an action, considering that said party may still be added by order of the court, on motion of the party or on its own initiative at any stage of the action and/or such times as are just, it remains essential — *as it is jurisdictional* — that any indispensable party be impleaded in the proceedings *before the court renders judgment*. This is because the absence of such indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.<sup>131</sup> (Emphasis supplied, citation omitted)

In *Metropolitan Bank and Trust Co. v. Alejo*<sup>132</sup> and *Arcelona v. Court of Appeals*,<sup>133</sup> this court clarified that the courts must first acquire *jurisdiction over the person* of an indispensable party. Any decision rendered by a court without first obtaining the required jurisdiction over indispensable parties is null and void for want of jurisdiction: “the presence of indispensable parties is necessary to vest the court with jurisdiction, which is ‘the authority to hear and determine a cause, the right to act in a case.’”<sup>134</sup>

In *Divinagracia v. Parilla*,<sup>135</sup> *Macawadib v. Philippine National Police Directorate for Personnel and Records Management*,<sup>136</sup> *People v. Go*,<sup>137</sup> and *Valdez-Tallorin v. Heirs of Tarona*,<sup>138</sup> among others, this court annulled judgments rendered by lower courts in the absence of indispensable parties.

The second consequence is unavailing in this case. While “[n]either misjoinder nor non-joinder of parties is ground for dismissal of an action”<sup>139</sup> and is, thus, not fatal to the Marcelino, Jr. Group’s action, we have shown that they lack a cause of action. This warrants the dismissal of their Complaint.

The first consequence, however, is crucial. It determines the validity of the Regional Trial Court’s award of damages to Rogelio, Sr.

<sup>131</sup> *People of the Philippines v. Go*, G.R. No. 201644, September 24, 2014, 736 SCRA 501, 506 [Per J. Perlas-Bernabe, First Division].

<sup>132</sup> 417 Phil. 303 (2001) [Per J. Panganiban, Third Division].

<sup>133</sup> 345 Phil. 250 (1997) [Per J. Panganiban, Third Division].

<sup>134</sup> *People of the Philippines v. Go*, G.R. No. 201644, September 24, 2014, 736 SCRA 501, 506 [Per J. Perlas-Bernabe, First Division].

<sup>135</sup> G.R. No. 196750, March 11, 2015 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/march2015/196750.pdf>> [Per J. Perlas-Bernabe, First Division].

<sup>136</sup> G.R. No. 186610, July 29, 2013, 702 SCRA 496 [Per J. Peralta, Third Division].

<sup>137</sup> G.R. No. 201644, September 24, 2014, 736 SCRA 501 [Per J. Perlas-Bernabe, First Division].

<sup>138</sup> 620 Phil. 268 (2009) [Per J. Abad, Second Division].

<sup>139</sup> RULES OF COURT, Rule 3, sec. 11 states:

Section 11. Misjoinder and non-joinder of parties. — Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately.

Since the Regional Trial Court did not have jurisdiction, the decision awarding damages in favor of Rogelio, Sr. is void.

Apart from this, there is no basis in jurisprudence for awarding moral and exemplary damages in cases where individual suits that were erroneously filed were dismissed. In the analogous cases that we previously discussed—*Hi-Yield Realty, Cua, Jr., Go, and Ching and Wellington*—the dismissal alone of the erroneously filed complaints sufficed. This court never saw the need to award moral and exemplary damages. This is in keeping with the Civil Code provisions that stipulate when the award of such damages is proper. We find no reason to conclude that the Marcelino, Jr. Group acted in so malevolent, oppressive, or reckless a manner that moral and exemplary damages must be awarded in such huge amounts as the Regional Trial Court did.

From the conclusion that the Decision awarding damages is void and unwarranted, it necessarily follows that the Order of the Regional Trial Court to immediately execute its Decision is likewise null and void. In *Arcelona*, the Decision sought to be annulled was already being executed. However, this court found that the assailed Decision was promulgated without indispensable parties being impleaded. Hence, the Decision was ruled to have been made without jurisdiction. This court nullified the judgment and declared:

*A void judgment for want of jurisdiction is no judgment at all. It cannot be the source of any right nor the creator of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. Hence, it can never become final and any writ of execution based on it is void: x x x it may be said to be a lawless thing which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head.<sup>140</sup> (Emphasis supplied)*

Accordingly, the subsequent Order of the Decision's immediate execution is also void for lack of jurisdiction. Contrary to Rogelio Sr.'s claim in its Petition, execution cannot ensue. For this reason, the Petition docketed as G.R. No. 177275 must be denied.

**WHEREFORE**, the Petition docketed as G.R. No. 174909 is **PARTLY GRANTED** and the Petition docketed as G.R. No. 177275 is **DENIED**.

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<sup>140</sup> *Arcelona v. Court of Appeals*, 345 Phil. 250, 287 (1997) [Per J. Panganiban, Third Division], citing *Leonor v. Court of Appeals*, 326 Phil. 74 (1996) [Per J. Panganiban, Third Division].

The Complaint filed by Marcelino M. Florete, Jr., Maria Elena F. Muyco, and Raul A. Muyco for Declaration of Nullity of Issuances, Transfers and Sale of Shares in People's Broadcasting Service, Inc. and All Posterior Subscriptions and Increases thereto with Damages is dismissed as the complainants have no cause of action. The award of ₱25,000,000.00 as moral damages and ₱5,000,000.00 as exemplary damages in favor of Rogelio Florete, Sr. is deleted. The Regional Trial Court Order dated May 18, 2006 ordering the immediate execution of its Decision dated August 2, 2005 is set aside.

**SO ORDERED.**


  
**MARVIC M.V.F. LEONEN**  
 Associate Justice

WE CONCUR:

  
**ANTONIO T. CARPIO**  
 Associate Justice  
 Chairperson

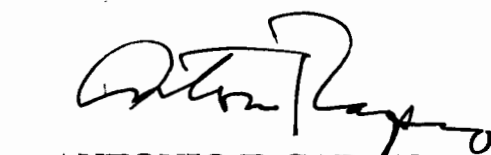
  
**MARIANO C. DEL CASTILLO**  
 Associate Justice

  
**JOSE CATRAL MENDOZA**  
 Associate Justice

  
**ESTELA M. BERLAS-BERNABE**  
 Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ANTONIO T. CARPIO**  
 Associate Justice  
 Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
Chief Justice