Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ROBERTO L. YUPANGCO and REGINA Y. DE OCAMPO Petitioners,	**G.R. No. 242074** Present:
- versus -	LEONEN, *J.*, *Chairperson*, CARANDANG, ZALAMEDA, ROSARIO, and DIMAAMPAO,* *JJ.*
O.J. DEVELOPMENT AND TRADING CORPORATION, OSCAR JESENA, and MARIOCA REALTY, INC. Respondents.	Promulgated: November 10, 2021

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DECISION

CARANDANG, *J.*:

This Court resolves a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated March 26, 2018 and Resolution[3] dated September 5, 2018 of the Court of Appeals (CA) in CA-G.R. CV No. 107891. The CA affirmed the Decision[4] dated March 29, 2016 of the Regional Trial Court (RTC) of Makati, Branch 142, dismissing the complaint for sum of money and damages arising from fraud (Complaint) filed by Roberto L. Yupangco (Roberto) and Regina Y. De Ocampo (Regina; collectively, petitioners) against O.J. Development and Trading Corporation (OJDTC), Oscar Jesena (Oscar), and Marioca Realty, Inc. (MRI; collectively, respondents), for want of cause of action.

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* Designated as additional Member per Special Order No. 2839 dated September 16, 2021.

1 *Rollo*, pp. 14-45.

2 Penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with the concurrence of Associate Justices Fernanda Lampas Peralta and Amy C. Lazaro-Javier (now a Member of this Court); id., pp. 53-63.

3 Id. at 65-66.

4 Penned by Judge Dina Pestaño Teves; id. at 397-424.

In their Complaint,[5] petitioners alleged that OJDTC and Oscar maintained a dollar exchange business with Grace Foreign Exchange (Grace), a company organized and existing under the laws of California, United States (US). Grace is engaged in remitting dollars from Overseas Filipino Workers in the US to recipients in the Philippines. Upon the instruction of the clients of Grace to remit specific sums to the designated recipients in the Philippines, OJDTC and Oscar would deliver to said recipients the peso equivalent of the dollar remittances that Grace received. Sometime in 1985, petitioners started buying US dollars from OJDTC and Oscar. In effect, the former advanced the peso equivalent of the dollar remittances to be delivered by the latter to the named beneficiary. In turn, OJDTC and Oscar would deliver to petitioners the payment for the dollars purchased one week from the transaction. The foregoing arrangement continued through the years until it was terminated sometime in February 2002 when OJDTC and Oscar could no longer pay the full amount of the US dollars that petitioners purchased. By then, the unpaid obligation of OJDTC and Oscar amounted to US$1.9 million.[6]

Petitioners claimed that Oscar induced them to loan the undelivered US$1.9 million to Grace on the pretext that the company needed a capital infusion for its expansion in California. Hence, in February 2002, petitioners, representing the Yupangco family, and Oscar, representing the Jesena family, executed an undated Memorandum of Agreement Prior to IPO (First MOA),[7] which provided that, petitioners' **"existing investment of $1.3 million plus $600,000"** with Grace shall be secured with a blank deed of sale over certain parcels of land stated therein. Subsequently, on March 11, 2002, Oscar, in his capacity as the President of OJDTC, executed a Promissory Note for Existing Investment[8] (Promissory Note) in petitioners' favor, which reads:

> **We refer to the ongoing reorganization of Grace Forex corporation to be undertaken by the above-named parties. In connection with such reorganization, the parties have agreed to secure the existing investment of One Million Nine Hundred Thousand Dollars ($1,900,000)** with the following properties:
>
> 1. A parcel of land located in Greenmeadows covered by TCT No. RT-54308 (358538) valued at PESOS: TWENTY MILLION (P20,000,000.00) more or less.
> 2. A town house located in Baguio [C]ity covered by TCT No. CTC-2913 valued at Five to Eight Million Pesos
> 3. The shares of Oscar Jesena ("Jesena") in the Dollar-Rent-A-Car Corporation valued at approximately [at] Thirty Million Pesos.

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5 Id. at 82-94.
6 Id. at 53-54.
7 Id. at 101-103.
8 Id. at 104-105.

> In the event that such properties are insufficient to secure the obligation, O.J. Trading Corporation ("O.J. Trading") undertakes to secure the same with their shares from Grace International USA Corporation ("Grace USA").
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> **This arrangement shall be valid and effective only until it is taken out by the equity participation of the parties in the proposed joint venture companies or the Initial Public Offering ("IPO") of Grace USA. Only the portion not covered by the equity participation will be secured by O.J. Trading Corporation.**
>
> If the foregoing is in accordance with the terms agreed upon please indicate your conformity thereto in the space provided below.[9] (Emphasis supplied)

Petitioners averred that Oscar misrepresented Grace's capacity to do business, much more make an Initial Public Offering (IPO) because at that time, Grace was already on the brink of bankruptcy. Grace closed its business sometime in October 2002 or eight months after the execution of the First MOA and the Promissory Note. Petitioner claimed that OJDTC and Oscar did not actually remit or could not show proof of remittance of the US$1.9 Million to Grace. They could not show an IPO plan or an engagement of an underwriter. Neither OJDTC and Oscar nor Grace could account for the US$1.9 million.[10]

As the proposed joint venture and IPO of Grace failed to materialize, Oscar, in his personal capacity and in his capacity as President of OJDTC, entered into a second Memorandum of Agreement (Second MOA) with petitioners, representing the Yupangco Family, on December 11, 2003. He acknowledged his and OJDTC's outstanding obligation to petitioners in the amount of US$1,242,229.77. The relevant portions of the Second MOA state:

> 1. That the FIRST PARTY [referring to OJDTC and Oscar] with office at 8-C Cacho Gonzales Building, Aguirre cor. Trasierra Streets, Legaspi Village, Makati City is engaged in the business of dollar exchange in the Philippines.
> 2. That the FIRST PARTY has a tie-up with Grace Foreign Exchange, a company duly organized and existing under the laws of California, U.S.A;
> 3. That their business has been existing for almost twenty (20) years;
> 4. That the FIRST PARTY and SECOND PARTY [referring to the Yupangco Family represented by petitioners] were all involved in the business in the Philippines for many years in connection with forex business of the FIRST PARTY with Grace Foreign Exchange;
> **5. That sometime on the month of February 2002, the SECOND PARTY and FIRST party ENTERED into a**

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9 Id.

10 Id. at 86.

Memorandum of Agreement regarding investment in Grace Foreign Exchange, copy of the Memorandum of Agreement is attached as Annex "A", the object of which has not been consummated;
6. Subsequently, however, the forex business suffered many losses and the FIRST PARTY experienced financial crisis. To date, the FIRST PARTY has outstanding obligation to the SECOND PARTY in the amount of One Million Two Hundred Forty-Two Thousand Two Hundred Twenty-Nine United States Dollars and seventy-seven cents (US$1,242,229.77);
7. Nevertheless, the FIRST PARTY desires to give some reimbursement to the SECOND PARTY in the form of cash of (sic) properties as follows:

A. In addition to the collateral mentioned in the Memorandum of Agreement [executed] on February 2002, the FIRST PARTY is willing to give and hereby conveys the following real properties to the SECOND PARTY, a partial payment, the value of which shall be determined by a mutually designated appraiser:

	Area	TCT Number	Location	Estimated Value
1.	727 sq.m	214040	Antipolo	P3,000.00/ sq.m
2.	44 sq.m	630751	Imus, Cavite	P800,000.00
3.	Duplex Townhouse		Greenvaley	P3.4 Million
4.	6,000 sq a.k.		Bacolod	P1.5 Million
5.	Lots		Iloilo, Mandumiao	P2.0 Million
6.	Iloilo Golf Country Club		Iloilo	P160,000.00
7.	Evercrest Golf Club		Batangas	P100,000.00
8.	Alabang Lot 1/6 Share		Ayala Alabang	

8. Moreover and in addition to the above, the FIRST PARTY is also willing to pay another FIVE MILLION PESOS (=P=5,000,000.00) to the SECOND PARTY as soon as Oscar Jesena get[s] his inheritance from his mother's estate;
9. The FIRST PARTY agree[s] to pay to the SECOND PARTY THREE HUNDRED THOUSAND PESOS (=P=300,000.00) in CASH upon signing of this agreement, and another TWO HUNDRED THOUSAND PESOS (=P=200,000.00) in CASH on January 30, 2004.
10. The FIRST PARTY hereby undertakes to exert best effort to fully pay its obligations.
11. Robert Yupangco hereby warrants that he is authorized by the YUPANGCO FAMILY to sign this compromise agreement.[11] (Emphasis supplied.)

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11 Id. at 106-107.

Petitioners alleged that OJDTC and Oscar delivered only the properties stated in A-1 to A-7, leaving an unpaid balance in the amount of US$1,227,451.26. The latter failed to pay despite repeated demands, claiming that they have no more money or properties with which to pay petitioners. However, petitioners discovered that OJDTC and Oscar had been surreptitiously transferring properties to MRI since April 2002. MRI is a closed family corporation incorporated in April 2002, composed of Oscar, his wife, his minor daughter, his father-in-law, his brother-in-law, and his sister-in-law. Of the 50,000 shares of MRI, 37,500 were subscribed by Marixi K. Jesena, who was a minor and had no gainful employment or other means of acquiring the shares other than the gratuity of Oscar. MRI only has a ₱1,250,000.00 capital stock, which is grossly insufficient to purchase the properties of OJDTC and Oscar. Thus, petitioners asserted that the transfer of properties between MRI and OJDTC and Oscar was simulated, designed specifically to fraudulently place the latter's properties beyond the reach of their creditors, such as petitioners.[12]

Petitioners prayed that OJDTC and Oscar be held jointly and severally liable for the payment of US$1,227,451.26, representing the unpaid balance of their outstanding obligation under the Second MOA. They also asked for legal interest at the rate of six percent (6%) *per annum* reckoned from the date of demand on August 18, 2004 until fully paid. Considering that MRI is a mere alter ego of OJDTC and Oscar, it should also be made solidarily liable with the latter for the payment of legal interest as well as for the payment of ₱1,000,000.00 moral damages, ₱1,000,000.00 exemplary damages, and ₱500,000.00 attorney's fees. Petitioners further prayed for the issuance of a writ of preliminary attachment before the RTC.[13]

In their Answer, OJDTC and Oscar denied petitioners' claims, arguing that petitioners are not real parties in interest since the MOAs are entered into by the Yupangco family. Even if they were authorized to file the suit, the money given by the Yupangcos is not a loan but an investment to the joint venture. OJDTC and Oscar had no legal obligation to reimburse the money as the Yupangcos must share in the financial losses that the joint venture suffered. They argued that the Yupangcos merely harassed the Jesena family to execute the Second MOA. They demanded for the payment of moral and exemplary damages and attorney's fees.[14]

MRI, for its part, filed an Answer with Compulsory Counterclaim. It alleged that it was duly incorporated and has a separate juridical personality from OJDTC and Oscar. It was incorporated on April 1, 2002 or before the execution of the Second MOA. It never transacted with petitioners and was not privy to any of the agreements between petitioners, OJDTC, and Oscar. Its transactions with OJDTC and Oscar were supported by valuable consideration. It insisted that there is no sufficient basis to pierce the veil of

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12 Id. at 88-89.
13 Id. at 89-93.
14 Id. at 398.

corporate fiction. Hence, for the unfounded suit, it prayed that petitioners be held liable for exemplary damages and attorney's fees.[15]

Ruling of the Regional Trial Court

In its Decision dated March 29, 2016, the RTC dismissed the Complaint for want of cause of action, *viz.*:

> **WHEREFORE**, premises considered, the instant Complaint is **DISMISSED** for want of cause of action.
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> The preliminary attachment and/ or garnishment of the properties remaining (sic) covered by the writ of attachment/ garnishment is hereby ordered **LIFTED.**
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> Taking into perspective that the instant case dragged on for years, this Court deems it proper and equitable to award attorney's fees in favor of Oscar Jesena and O.J. Development. Moreover, since this case instituted by the plaintiffs against the defendant is found to be baseless, and further considering the social standing of defendant Oscar Jesena, the Court deems the award of moral damages in the amount of One Million (Php 1,000,000.00) Pesos is justified.
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> Plaintiff is further ordered to pay the defendants the sum of Three Hundred Thousand (Php 300,000.00) Pesos as attorneys fees plus the costs of suit.
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> SO ORDERED.[16] (Emphasis in the original)

The RTC found that petitioners' cause of action is based primarily on the Second MOA. However, the same was executed by and between OJDTC, Oscar, and the Yupangco family. Petitioners were merely acting as representatives of the latter. Hence, it is the Yupangco family who is the real party in interest, but the Complaint did not make the members of the Yupangco family as plaintiffs. There was also no showing that petitioners were authorized to commence the action and represent the family. When the plaintiff is not the real party in interest, the case is dismissible on the ground of lack of cause of action.[17]

In any case, the RTC also found that petitioners failed to present a *prima facie* case against respondents. It noted that despite the numerous exhibits presented, only the Second MOA and the Promissory Note proved Oscar's liability. However, both documents stated that the US$1.9 Million is an investment and not a loan. Therefore, OJDTC and Oscar are under no legal obligation to return it as all parties share the risks in the business. While the Second MOA stated that OJDTC and Oscar "desires to give some reimbursement" and undertook "to exert best effort to fully pay its

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15 Id. at 398-399.
16 Id. at 424.
17 Id. at 427-428.

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obligations," this is a potestative condition, which is null and void under Article 1308 of the New Civil Code because the reimbursement of petitioners' investment was left to the will of OJDTC and Oscar. More, the RTC ruled that there is no other supporting document substantiating why OJDTC and Oscar owed US$1,242,229.77 to petitioners. Petitioner Regina admitted that the checks she and Roberto submitted in evidence had been paid and she did not keep a record of all the checks issued to Oscar. Regina's ledger did not contain any acknowledgment or conforme of Oscar. The testimony of Roberto did not also prove the alleged monetary obligation of OJDTC and Oscar.[18]

With respect to MRI, the RTC held that petitioners failed to present clear and convincing evidence that it was purposely employed to evade legitimate and binding commitment and to perpetrate fraud. Regina admitted that MRI was not a party in the transactions. There was no basis to pierce the veil of corporate fiction.[19]

Ruling of the Court of Appeals

In its assailed Decision,[20] the CA sustained the ruling of the RTC. It held that aside from the fact that the First MOA, Promissory Note, and the Second MOA all pertained to the money invested by petitioners and not a loan contracted by respondents, the record showed that all the checks issued by petitioners in the name of OJDTC and Oscar had been duly paid. OJDTC and Oscar presented fund transfer slips which proved the matching dollar payments they made for each of petitioners' checks. Regina's ledger did not establish that a loan was incurred. During her cross-examination, Regina stated that the ledgers are just a record of how much money she is expecting from OJDTC and Oscar. She also admitted that OJDTC and Oscar neither borrowed money nor was there any loan obligation. She explained that the transactions between them involved pure buying and selling of US dollars. After receiving the dollars, she would again resell it to others to generate income and OJDTC and Oscar had no say to whom she should sell it. She would again use the proceeds of the same to purchase more dollars from OJDTC and Oscar.[21]

Consequently, the CA agreed with the RTC that what impelled Oscar to sign the MOAs and the Promissory Note was his desire to help his best friend, petitioner Roberto, and his desire to recognize his debt of gratitude to Nita Yupangco, Roberto's mother, who helped him when he was just starting his business. Without the Yupangcos help, Oscar would not be able to set-up his business in America. The CA noted that the business of foreign exchange is a very risky business given the fluctuation of the US dollars *vis-à-vis* the Philippine peso. When the US dollar is strong, the Yupangcos lost in the exchange, but if the dollar is weak, they will earn more profit. The CA

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18 Id. at 427-430.
19 Id. at 430.
20 Supra note 2.
21 *Rollo*, pp. 59-61.

concluded that petitioners failed to prove by a preponderance of evidence and by their own admissions in open court that OJDTC and Oscar had a loan obligation and that there was a remaining amount still unpaid.[22]

Petitioners sought reconsideration which the CA denied in its challenged Resolution. Hence, they filed the present petition.

Arguments of Petitioners

Petitioner asked that We review the factual findings of the CA on the grounds that they are based on speculations, surmises, and conjectures and misapprehension of facts. They maintained that the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[23]

First, petitioners alleged that they are real parties in interest. Not only are they members of the Yupangco Family but are also the signatories in the Second MOA. Petitioners stand to be benefitted or injured by any judgment in the case. They argued that the inclusion of the names of all the parties in the title of the complaint is a mere formal requirement, not fatal to the case as the Rules of Court require courts to pierce the form and go into the substance of the case.[24]

Second, petitioners insisted that OJDTC and Oscar owed them US$1,227,451.26 for failure to deliver the dollar equivalent of the amount that they advanced. The latter acknowledged their debt in the Second MOA. The US$1.9 Million referred in the First MOA and the Promissory Note was not an investment but a loan. Petitioners emphasized that there was no privity of contract between the Yupangcos and Grace. OJDTC and Oscar failed to produce any evidence that the US$1.9 Million was used to capitalize Grace. Even assuming that the money was an investment, it is an undisputed fact that the venture with Grace did not materialize, hence it was incumbent upon OJDTC and Oscar to return the US$1.9 Million to the Yupangcos. The First MOA was temporary in nature since a reading of the same would show that the placement of US$1.9 Million was conditioned upon a purported IPO of Grace, which never occurred.[25]

Third, the term "best efforts" appearing in the Second MOA did not make the obligation of OJDTC and Oscar subject to a potestative condition. Instead, the term should be understood as a standard of diligence in the fulfillment of the obligation. Black's Law Dictionay defined "best efforts" as a standard stronger than good faith obligation.[26]

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22 Id. at 62-63.
23 Id. at 27.
24 Id. at 27-29.
25 Id. at 30-36.
26 Id. at 37-38.

Fourth, petitioners asserted that MRI is a conduit or alter ego of OJDTC and Oscar, thus its separate personality must be pierced and should be held solidarily liable with the latter.[27]

Lastly, petitioners averred that the moral damages and attorney's fees granted to OJDTC and Oscar are baseless. Instead, they are the ones entitled to such awards due to respondents' unjustified refusal to comply with their claims.[28]

Arguments of Respondents

In their Comment,[29] OJDTC and Oscar alleged that petitioners are raising questions of facts which are prohibited under a Rule 45 petition. They claimed that the petition lacks merit, is prosecuted manifestly for delay, and the questions raised are too unsubstantial to warrant consideration. At the outset, petitioners were not the real parties in interest. They were suing in their personal capacities and not as representatives of the Yupangco family. There was no special power of attorney attached to the Complaint or presented during trial. Petitioners therefore had no legal personality or capacity to file the suit. The Complaint is dismissible under Section 1(d), Rule 16 of the Rules of Court.[30]

As to the merits of the case, respondents countered that they did not owe money to the Yupangco family. They stressed that Regina admitted in court that the checks she presented are the only Philippine peso checks that she issued to OJDTC. These checks were all correspondingly paid with US dollars as evidenced by the Landbank FCDU fund transfers slips which OJDTC submitted in court. Eager to help a friend, Oscar consented to the plan of Roberto to execute the First MOA, where they agreed to put up a joint venture engaged in the business of dollar exchange in the Philippines by converting dollar remittances of Filipinos residing abroad in the US to Philippines peso. This way, not only were the financial losses of Roberto would be covered, but the joint venture would also make money. The joint venture under the First MOA did not materialize because Roberto had criminal records and the laws of the US prohibit any person with criminal record from engaging in such business. Roberto then started to threaten Oscar to pay the alleged financial losses suffered by the Yupangco Family in the amount of US$1.9 Million. Otherwise, civil and criminal cases would be filed against him, and he would be sent to jail. Oscar, who has not been sued in his entire life, got scared; hence he signed the Promissory Note prepared by Roberto. This was also the same reason why Oscar signed the Second MOA.[31] OJDTC and Oscar alleged that contrary to the contentions of petitioners, they had assigned to the Yupangco family the properties as well as paid the cash amounts mentioned in the Second MOA, which should

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27 Id. at 38-39.
28 Id. at 40-44.
29 Id. at 585-632.
30 Id. at 618-621.
31 Id. at 395-617.

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already relieve or discharge them or the Jesena Family from their desire to give some reimbursement to the Yupangco family with regard to the latter's investment in the allegedly failed joint venture business. Among the properties transferred by OJDTC are undated deeds of sale or deeds of sale with the name of the buyer or consideration still blank.[32]

OJDTC and Oscar maintained that the Second MOA is void since it involved a potestative condition, that is, the fulfillment of the obligation depended entirely on their will. The reimbursement to the Yupangco family is only a voluntary gesture and not a legal obligation. OJDTC and Oscar also averred that the CA did not err in not holding MRI liable for failure of petitioners to justify the piercing of corporate fiction. Likewise, the award of moral damages and attorney's fees in their favor is in order.[33]

In its Comment, MRI essentially alleged the same arguments raised by OJDTC and Oscar.[34]

Issues

The issues before Us are:

1. Whether Roberto and Regina are real parties in interest;
2. Whether the Second MOA entered into by the parties involved a loan obligation;
3. Whether the term "best efforts" appearing in the Second MOA is a potestative condition dependent on the will of the obligor which nullifies the agreement; and
4. Whether the alleged transfer of properties to MRI is in fraud of creditors such as petitioners.

Ruling of the Court

The petition is meritorious.

Preliminarily, contrary to the assertions of both parties, We rule that the issues in this case involve questions of law, and not of fact. A question of law arises when there is doubt as to what the law is on a certain set of facts, while there is a question of fact when the doubt arises as to the truth or falsehood of the alleged facts. The test of whether the question is one of law or fact is not the appellation given to such question by the party raising it. Rather, it is whether the appellate court can determine the issue without reviewing or evaluating the evidence. If no review is necessary, the question is one of law. Otherwise, it is a question of fact.[35] Whether petitioners are real parties in interest only requires the application of the definition of real parties in interest under the Rules of Court. Whether the Second MOA is a

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32 Id. at 618.
33 Id. at 626-633.
34 Id. at 579-581.
35 *Escoto v. Philippine Amusement and Gaming Corp.*, 797 Phil. 320 (2016).

loan obligation merely requires the interpretation of the terms of the agreement. If the terms of the contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall control.[36] Likewise, the determination of whether a potestative condition exists would only require Us to apply the meaning of a potestative condition found in the New Civil Code. The foregoing issues do not involve the reevaluation of evidence on record. Hence, they are questions of law which are cognizable by the Court in a petition for review on *certiorari* under Rule 45 of the Rules of Court.

Conversely, with respect to the issue of whether the transfer of properties is in fraud of creditors, as would be discussed later, it shall not be determined in this case for collection of sum of money.

Petitioners are real parties in interest.

The RTC and the CA dismissed the complaint on the ground that petitioners are not real parties in interest. They held that petitioners are suing based on the Second MOA where they only acted as representatives of the Yupangco Family. Absent any authorization from the Yupangco Family, they cannot institute the action for lack of legal personality. The RTC and the CA are incorrect.

Section 2, Rule 3 of the Rules of Court define a real party in interest as the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. The rule on real parties in interest has two requirements, namely: (1) to institute the action, the plaintiff must be the real party in interest; and (2) the action must be prosecuted in the name of the real party in interest. Interest means material interest or an interest in issue to be affected by the decree of the judgment of the case, and not a mere curiosity about the question involved.[37] Thus, in an action upon a contract, the real parties in interest are the parties to the said contract. One who is not a party thereto cannot maintain an action on it.[38] When the plaintiff is not the real party in interest, the case is dismissible on the ground of lack of cause of action.[39]

It is undisputed that the signatories to the Second MOA are the petitioners, OJDTC, and Oscar. While the Second MOA[40] mentioned the Yupangco family as the second party, We rule that it is a mere description of the family to which Roberto and Regina belongs and nothing more. Petitioners being one of the contracting parties in the Second MOA have a material interest in an action made upon it. They would benefit or lose from the judgment in the case. Accordingly, they are real parties in interest.

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36 CIVIL CODE OF THE PHILIPPINES, Article 1370.

37 *Ang v. Pacunio*, 763 Phil. 542, 547 (2015), citing *Goco v. Court of Appeals*, 631 Phil. 394, 403 (2010).

38 *Trinidad v. Bank of Commerce*, G.R. No. 214224, June 16, 2021, citing *Vda. de Rojales v. Dime*, 780 Phil. 698, 708 (2016).

39 *Ang v. Pacunio*, supra note 33 at 547-548.

40 Id. at 106-108.

The Second MOA is a loan contract.

The Complaint based its cause of action on the Second MOA. The RTC, as affirmed by the CA, found that the Second MOA involves an investment and not a loan obligation. As such, Oscar and OJDTC are under no obligation to return the invested money as all the parties share the risk involved in the business. We disagree.

For a better understanding, we shall restate the undisputed facts of the case as found by the courts *a quo*. Petitioners, OJDTC, and Oscar are engaged in the buying and selling of US Dollars. Grace would receive the dollar remittances of the OFWs in the US, while OJDTC and Oscar would deliver the peso equivalent of the dollar remittances to the OFWs' designated beneficiaries in the Philippines. Petitioners advance the peso equivalent of the dollar remittances by issuing checks in Philippine Pesos to OJDTC and Oscar, who upon encashment shall deliver it to the named beneficiaries. OJDTC and Oscar would pay the corresponding amount in dollars to petitioners upon receipt of the actual remittance from Grace. This arrangement went on from 1985 to 2002. During these years, OJDTC and Oscar accumulated an unpaid balance to petitioners in the amount of US$1.9 million, which amount was rolled over as investment or additional capital to Grace. Since there was a remaining balance of US$1,227,451.26 despite the payment made by OJDTC and Oscar, petitioners filed the present collection suit.[41]

Notably, as We are not a trier of facts, We shall not disturb the uniform factual findings of the RTC and the CA that OJDTC and Oscar accumulated unpaid and undelivered US$1.9 million in favor of petitioners, which was converted into an investment for the reorganization of Grace. Given this factual backdrop, We now interpret the agreements entered into between the parties starting with the First MOA.

The First MOA is titled, "Memorandum of Agreement Prior to IPO" or initial public offering. It reads:

> **Regarding existing investment of $1.3 million plus $600,000 advances revolving from customers.** The board of directors requested that the approximate amount of $1.9 million be secured with clean titles and blank deed of sale as follows:
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> a) Green meadows P____
> b) Baguio Town House P 5.8 million
> c) Alabang property P15.20 million
> d) Dollar Rent-a-Car share of Oscar Jesena approsimately P30M worth will further serve as temporary security for the preincorporation of preferred shares worth 600,000.

41 Id. at 58-59, 398.

> To be noted this arrangement is temporary until it is taken out by (sic) participation or IPO. Only portion not taken out by equity will be (sic) by the OJTC (Oscar Jesena Trading Corp.)[42] (Emphasis supplied)

That the US$1.9 million was an investment is further bolstered by the terms of the Promissory Note subsequently executed by Oscar on March 11, 2002, both in his personal capacity and in his capacity as President of OJDTC. The first and fourth paragraphs of the Promissory Note stated:

> **We refer to the ongoing reorganization of Grace Forex corporation to be undertaken by the above-named parties. In connection with such reorganization, the parties have agreed to secure the existing investment of One Million Nine Hundred Thousand Dollars ($1,900,000.00) with the following properties** x x x.
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> x x x x
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> This arrangement shall be valid and effective only until it is taken out by the equity participation of the parties **in the proposed joint venture companies or the Initial Public Offering of Grace USA.** x x x[43] (Emphasis supplied)

The terms of the First MOA and the Promissory Notes are clear; hence their literal import shall prevail. **While the RTC and the CA correctly concluded that the First MOA and the Promissory Notes involved an investment, they erred in construing the Second MOA. It is undisputed that the object of the First MOA, which is the reorganization of Grace did not materialize. Hence, it cannot be said that the US$1.9 Million of petitioners remained and continued to be an investment. What can be deduced is the implied admission that OJDTC and Oscar are holding the money of petitioners.** It is in this light that the Second MOA was executed between the parties on December 15, 2003. The pertinent portions of the Second MOA are reproduced below for reference:

> 5. That sometime on the month of February 2002, the SECOND PARTY and FIRST party entered into a Memorandum of Agreement **regarding investment in Grace Foreign Exchange, copy of the Memorandum of Agreement is attached as Annex "A", the object of which has not been consummated;**
> 6. **Subsequently, however, the forex business suffered many losses and the FIRST PARTY experienced financial crisis. To date, the FIRST PARTY has outstanding obligation to the SECOND PARTY in the amount of One Million Two Hundred Forty-Two Thousand Two Hundred Twenty-Nine United States Dollars and seventy-seven cents (US$1,242,229.77);**
> 7. Nevertheless, **the FIRST PARTY desires to give some**

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42 Id. at 101.
43 Id. at 104-105.

reimbursement to the SECOND PARTY in the form of cash of (sic) properties. x x x

A. In addition to the collateral mentioned in the Memorandum of Agreement [executed] on February 2002, the FIRST PARTY is **willing to give and hereby conveys the following real properties to the SECOND PARTY, as partial payment**, the value of which shall be determined by a mutually designated appraiser:

	Area	TCT Number	Location	Estimated Value
1)	727 sq.m	214040	Antipolo	P3,000.00/ sq.m
2)	44 sq.m	630751	Imus, Cavite	P800,000.00
3)	Duplex Townhouse		Greenvaley	P3.4 Million
4)	6,000 sq a.k.		Bacolod	P1.5 Million
5)	Lots		Iloilo, Mandumiao	P2.0 Million
6)	Iloilo Golf Country Club		Iloilo	P160,000.00
7)	Evercrest Golf Club		Batangas	P100,000.00
8)	Alabang Lot 1/6 Share[44]		Ayala Alabang	

Under the Second MOA, the "FIRST PARTY," referring to OJDTC and Oscar (both in his personal capacity and in his capacity as President of OJDTC) acknowledged that they have an outstanding obligation to the "SECOND PARTY," pertaining to petitioners, in the amount of US$1,242,229.77. OJDTC and Oscar also expressed their desire to pay or to "reimburse" petitioners of their obligation. In the same document, they conveyed several real properties as partial payment to their obligation. **To Our mind, the Second MOA partakes the nature of a loan obligation and not an investment.**

We differentiate between an investment contract and a loan. On one hand, an investment contract refers to a contract, transaction, or scheme whereby a person invests his/her money in a common enterprise and is led to expect profits primarily from the efforts of others. It is presumed to exist whenever a person seeks to use the money or property of others on the promise of profits.[45] In our jurisdiction, the "Howey Test"[46] is employed to determine whether an agreement is an investment contract. It requires the concurrence of the following for an investment contract to exists: (1) a contract, transaction; or scheme; (2) an investment of money; (3) investment is made in a common enterprise; (4) expectation of profits; and (5) profits arising primarily from the efforts of others.[47] On the other hand, Article 1933 of the New Civil Code states that, "[b]y the contract of loan, one of the

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44 *Rollo*, pp. 106-107.

45 *Virata v. Ng Wee*, 813 Phil. 252, 319 (2017).

46 Named after the US case of *Securities and Exchange Commission v. W.J. Howey Co.*, 328 US 293 (1946).

47 Id.

parties delivers to another x x x money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid, in which case the contract is simply called a loan or mutuum." Simple loan may be gratuitous or with a stipulation to pay interest.

Tested on the foregoing parameters, the Second MOA is not an investment contract. The agreement, while referring to an investment in Grace Foreign Exchange, stated that the same was not consummated or did not materialize. Consequently, there was no investment in a common enterprise to speak of. Neither was there any mention of profit or the expectation to have profits primarily on the efforts of another person. On the contrary, the terms of the Second MOA are clear that OJDTC and Oscar have an "outstanding obligation" to petitioners in the amount of US$1,242,229.77. **The literal meaning of "outstanding obligation" is indebtedness.** In the ordinary course of things, OJDTC and Oscar should have returned the US$1.9 million of petitioners considering that, as stated in the 5th clause of the Second MOA, the object of the investment had not been consummated. However, due to the financial crisis experienced by OJDTC and Oscar (mentioned in the 6th clause of the Second MOA), they were not able to return the whole US$1.9 million. As of the date of the execution of the Second MOA or on December 15, 2003, they declared that they have an outstanding obligation to petitioners in the amount of US$1,242,229.77. Petitioners are expecting the return of their money. Otherwise, there would be no need for the execution of the Promissory Note securing the money given or the Second MOA. Thus, the elements of a loan are satisfied. Petitioners parted with their money in Philippine pesos with the expectation/condition that they would be paid the corresponding equivalent in US dollars. In the absence of a judgment declaring the Second MOA invalid or void, the same is valid and binding on the parties and must be complied with in good faith.

Subsequently, We rule that the testimony of Regina before the RTC cannot be taken against petitioners. Regina answered "no," to the questions, "did the defendant OJ Development and Trading Corp, borrowed money from you or the plaintiffs?" and "did defendant Oscar Jesena borrowed money or obtained any loan from the plaintiffs?" Indeed, there was no loan in the ordinary sense that petitioners directly lent US$1.9 million to OJDTC and Oscar. Rather, the US$1.9 million represents the accumulated undelivered dollar purchases of petitioners from OJDTC and Oscar. The latter failed to deliver the corresponding US dollar equivalents of the Philippine pesos given by petitioners.

OJDTC and Oscar cannot escape from liability by the mere expedient of claiming financial losses in the foreign exchange business. In the first place, it is an established fact that they are the only ones transacting with Grace in the US and distributing the peso equivalents of the US dollar remittances to the beneficiaries in the Philippines. Oscar's transaction with petitioners is purely buying of US dollars. The process ends once petitioners received the dollar equivalents of their purchases. Petitioners may transact

the said dollars with other people, and this has nothing to do with Oscar and OJDTC. Oscar did not explain how the alleged financial losses occurred.

Conversely, Oscar argued that he did not owe any money to petitioners. He merely executed the MOAs to help his best friend Roberto and to show his debt of gratitude to Roberto's mother who helped him start his business in America. He also averred that he got scared because Roberto threatened to put him in jail. We are not persuaded.

The Second MOA is the law between the parties. If Oscar was compelled or forced to sign the Second MOA, he should have filed a case for annulment of contract based on vitiated consent. Further, since Oscar is a businessman dealing with millions of dollars, it could be safely assumed that he takes ordinary care of his concerns and that he would not be executing an agreement if there was no valuable consideration given. It is contrary to human experience and in the ordinary course of things to execute an instrument acknowledging indebtedness when in truth no such monetary obligation exists. Furthermore, Oscar, in his Comment before Us, maintained that he already assigned to the Yupangco family all the properties as well as paid all the cash stated in the Second MOA. Hence, he himself recognized the validity of the agreement.

OJDTC and Oscar's obligation to pay petitioner is unaffected by the potestative condition.

The tenth clause of the Second MOA, reads: "The FIRST PARTY hereby undertakes to exert best effort to fully pay its obligation." The RTC ruled that the phrase "to exert best effort to fully pay its obligation" is a potestative condition, which is void under Article 1308 of the New Civil Code since the reimbursement of the plaintiffs' investment was left to the will of OJDTC and Oscar. OJDTC and Oscar maintained the same argument. We reject their contention.

A "potestative condition" is a condition the fulfillment of which depends exclusively upon the will of the debtor, in which case, the conditional obligation is void. Article 1182 of the Civil Code reads:

> Article 1182. When the fulfillment of the condition depends upon the sole will of the debtor, the conditional obligation shall be void. If it depends upon chance or upon the will of a third person, the obligation shall take effect in conformity with the provisions of this Code.

Case law distinguishes between a potestative condition imposed on the birth of the obligation and a potestative condition imposed on the obligation's fulfillment. In the latter scenario, only the condition is voided, leaving unaffected the obligation itself.[48]

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48 *Gemudiano, Jr. v. Naess Shipping Philippines, Inc.*, G.R. No. 223825, January 20, 2020, citing *Romero v. Court of Appeals*, 320 Phil. 269, 282 (1995).

In this case, the condition found in the Second MOA, that is, the full payment of the obligation through the best efforts of OJDTC and Oscar is a pure potestative condition, dependent on the sole will or discretion of OJDTC and Oscar. However, the said condition is imposed not on the inception or birth of the contract/obligation as the Second MOA was already perfected and even partially executed (OJDTC and Oscar provided for partial payment in the same document). Rather, the condition is imposed on the performance or fulfillment of OJDTC and Oscar's obligation to reimburse or pay their outstanding obligation with petitioner. Hence, conformably with jurisprudence, only the condition providing for payment on a "best effort" basis is treated as void, the obligation to return petitioners' money is unaffected.[49] Simply put, the obligation of OJDTC and Oscar to pay petitioners is considered as unconditional.

Petitioners are entitled to their claims against OJDTC and Oscar.

We already held that OJDTC and Oscar are bound to pay petitioners under the Second MOA, we shall now proceed to determine the amount due to the latter.

The Second MOA provided that OJDTC and Oscar's outstanding obligation is US$1,242,229.77. In the same document, a list of real properties was conveyed to petitioners as partial payment, which are:

> A. In addition to the collateral mentioned in the Memorandum of Agreement [executed] on February 2002, the FIRST PARTY is willing to give and hereby conveys the following real properties to the SECOND PARTY, as partial payment, the value of which shall be determined by a mutually designated appraiser:

	Area	TCT Number	Location	Estimated Value
1.	727 sq.m	214040	Antipolo	P3,000.00/ sq.m[50]
2.	44 sq.m	630751	Imus, Cavite	P800,000.00
3.	Duplex Townhouse		Greenvaley	P3.4 Million
4.	6,000 sq a.k.		Bacolod	P1.5 Million
5.	Lots		Iloilo, Mandumiao	P2.0 Million
6.	Iloilo Golf Country Club		Iloilo	P160,000.00
7.	Evercrest Golf Club		Batangas	P100,000.00

49 See *Gemudiano, Jr. v. Naess Shipping Philippines, Inc.*, G.R. No. 223825, January 20, 2020.

50 Total of ₱ 2,181,000.00.

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8.	Alabang Lot 1/6 Share	Ayala Alabang[51]

According to petitioners, OJDTC and Oscar were able to deliver only the properties from A-1 to A-7, leaving an unpaid balance of US$1,227,451.26. For their part, OJDTC and Oscar countered that they delivered everything mentioned in the Second MOA, which included cash amounts.[52] However, except for their bare allegations, OJDTC and Oscar failed to present any other proof of payment to petitioners. Jurisprudence instructs that one who pleads payment has the burden of proving it; the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment. A mere allegation is not evidence.[53]

Subsequently, in the absence of evidence showing contrary values, We shall adopt the values of the properties stated in the Second MOA in the computation of the remaining balance of OJDTC and Oscar. We rule that OJDTC and Oscar, by way of conveyance of properties, made partial payments in the amount of ₱10,141,000.00 or US$182,839.319 using US$1.00 = ₱55.464[54] exchange rate as of the date of the Second MOA or on December 15, 2003. Thus, contrary to the claim of petitioners, OJDTC and Oscar's outstanding balance is US$1,059,390.45.[55]

As a general rule, obligations shall be paid in Philippine currency. However, pursuant to Republic Act No. 8183,[56] the contracting parties may stipulate that the obligation be settled in other currency at the time of payment. Here, there was no written contract between the parties stipulating that the obligation of OJDTC and Oscar may be paid in US Dollars, or its peso equivalent. Nevertheless, considering the nature of the transaction between the parties, which involved the buying and selling of US Dollars and the fact that the undelivered US Dollar purchases of petitioners is what gave rise to OJDTC's and Oscar's obligation, the latter shall be solidarily liable to pay in US Dollars.[57]

Petitioners must file a separate action for Accion Pauliana against MRI.

Petitioners argued that MRI conspired with OJDTC and Oscar in committing fraud by concealing the properties of the latter from their reach.

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51 *Rollo*, p. 107.

52 8. Moreover and in addition to the above, the FIRST PARTY is also willing to pay another FIVE MILLION PESOS (=P=5,000,000.00) to the SECOND PARTY as soon as Oscar Jesena get(s) his inheritance from his mother's estate;
9. The FIRST PARTY agree(s) to pay to the SECOND PARTY THREE HUNDRED THOUSAND PESOS (=P=300,000.00) in CASH upon signing of this agreement, and another TWO HUNDRED THOUSAND PESOS (=P=200,000.00) in CASH on January 30, 2004.

53 *Tan, Jr. v. Hosana*, 780 Phil. 258, 267 (2016).

54 Exchange Rate Philippine Peso per US Dollar, accessed at https://www.bsp.gov.ph/statistics/external/pesodollar.xls

55 US$1,242,229.77 minus US$182,839.319.

56 Section 1. All monetary obligations shall be settled in the Philippine currency which is legal tender in the Philippines. However, the parties may agree that the obligation or transaction shall be settled in any other currency at the time of payment.

57 *Netlink Computer Inc., v. Delmo*, G.R. No. 160827, 736 Phil. 487, 487 (2014).

They averred that OJDTC and Oscar surreptitiously transferred their properties to MRI since April 2002. Hence, MRI should be held solidarily liable with OJDTC and Oscar in the payment of petitioners' claim. Petitioners are mistaken.

At the outset, We cannot determine in this case for a collection of sum of money whether the conveyance of properties made by OJDTC and Oscar to MRI is in fraud of creditors. Case law teaches that for as long as the creditor still has a remedy at law for the enforcement of his/her claim against the debtor, the creditor will not have any cause of action against the debtor for rescission of the contracts entered into by and between the debtor and another person.[58] Petitioners may file a separate suit for *accion pauliana*[59] against MRI when they no longer have any other legal remedy against OJDTC and MRI.

All told, petitioners were able to prove by a preponderance of evidence that OJDTC and Oscar are solidarily liable for the payment of US$1,059,390.45. In consonance with recent law and jurisprudence,[60] the amount due to petitioners shall be subject to a legal interest of twelve percent (12%) *per annum* from date of demand until June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until full satisfaction.[61]

WHEREFORE, the petition is **GRANTED.** The Decision dated March 26, 2018 and the Resolution dated September 5, 2018 of the Court of Appeals in CA-G.R. CV No. 107891 are **REVERSED** and **SET ASIDE.** Respondents O.J. Development and Trading Corporation and Oscar Jesena are held solidarily liable to pay petitioners US$1,059,390.45, or its peso equivalent, representing the unpaid balance of their outstanding obligation under the Second MOA with interest at the rate of twelve percent (12%) *per annum* from date of demand on August 18, 2004 until June 30, 2013. The total monetary obligation shall then be subject to six percent (6%) *per annum* legal interest from July 1, 2013 until fully paid.

SO ORDERED.

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58 *Saddul v. Losloso,* G.R. No. 205093, January 30, 2019.

59 See **Article 1381.** The following contracts are rescissible:
(1) Those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object thereof;
(2) Those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number;
(3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them;
(4) Those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority;
(5) All other contracts specially declared by law to be subject to rescission. (Emphasis supplied)

60 BSP-MB Circular No. 799 and *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013.

61 See *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

ROSMARI D. CARANDANG
Associate Justice

WE CONCUR:

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JAPAR B. DIMAAMPAO
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.

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

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.

ALEXANDER G. GESMUNDO
Chief Justice