



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila  
SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **28 April 2021** which reads as follows:*

***“G.R. No. 249789 (Atty. Florencio T. Mallare,\* The Estate of Jane Y. Mallare, as represented by its Special Administrator, Atty. Florencio T. Mallare, Aristotle Y. Mallare, and Melody Tracy Mallare v. Anthony Edmund Hwang and Elizabeth Lim Tong, as purportedly representing A&E Industrial Corporation, and the Register of Deeds of Quezon City). –***

The Court **DENIES** the petition.

Batas Pambansa Blg. 129, as amended, vested the Court of Appeals with jurisdiction over petitions for annulment of judgment, *viz.*:

Section 9. Jurisdiction. – The Court of Appeals shall Exercise:

x x x x

2. Exclusive original jurisdiction over actions for annulment of judgements of Regional Trial Courts; and

x x x x

Jurisdiction over the subject matter is determined by the allegations in the complaint or petition irrespective of whether the plaintiff or petitioner is

---

\* Also referred as Atty. Florencio T. Malare in some parts of the rollo.

entitled to favorable judgment.<sup>1</sup> Verily, the Court of Appeals should not have dismissed the petition for annulment of judgment for lack of jurisdiction. While the stockholders' petition was directed against the officers of the corporation, namely Anthony Edmund Hwang and Elizabeth Tong, this intra-corporate relation, however, is merely incidental and should not divest the Court of Appeals of jurisdiction. The main thrust of the petition is still the annulment of the trial court's decision, which is within the jurisdiction of the Court of Appeals.

Nonetheless, the petition for annulment of judgment is still dismissible due to petitioners' lack of legal personality to file the petition. In *Evangelista v. Santiago*,<sup>2</sup> the Court explained the difference between the "lack of legal capacity to sue" from the "lack of personality to sue," to wit:

Lack of legal capacity to sue means that the plaintiff is not in the exercise of his civil rights or does not have the necessary qualification to appear in the case or does not have the character or representation he claims. On the other hand, a case is dismissible for lack of personality to sue upon proof that the plaintiff is not the real party-in-interest, hence grounded on failure to state a cause of action. The term "lack of capacity to sue" should not be confused with the term "lack of personality to sue." While the former refers to a plaintiff's general disability to sue, such as on account of minority, insanity, incompetence, lack of juridical personality or any other general disqualifications of a party, the latter refers to the fact that the plaintiff is not the real party-in-interest. Correspondingly, the first can be a ground for a motion to dismiss based on the ground of lack of legal capacity to sue; whereas the second can be used as a ground for a motion to dismiss based on the fact that the complaint, on the face thereof, evidently states no cause of action.

Here, as major stockholders of A&E Corporation, petitioners did not possess any legal disability or disqualification to file the case, hence, contrary to the ruling of the Court of Appeals, they had the legal capacity to sue. However, they filed the petition below with the Court of Appeals in their own capacities as majority stockholders, instead of a derivative suit on behalf of A&E Corporation. This rendered the petition dismissible on the ground of lack of personality to sue.

To emphasize, the subject property covered by TCT No. RT-120631 (333222) is owned by A&E Corporation. As such, the acts complained of by petitioners are acts committed against the corporation itself and not against them as stockholders. As the Court of Appeals noted, "*petitioners, as individual stockholders, do not have vested rights over the property covered by the said TCT. It is dicta in corporation law that a corporation is a juridical person with a separate and distinct personality from that of the stockholders or members who compose it.*"<sup>3</sup> Verily, the cause of action belongs to the corporation. Generally, the power to sue on behalf of the corporation is lodged

<sup>1</sup> *Bank of Commerce v. PDB*, 695 Phil. 627, 653 (2012).

<sup>2</sup> 497 Phil. 269, 285 (2005).

<sup>3</sup> CA Resolution dated June 18, 2019, p. 3.

in the board of directors. Only in exceptional circumstances may stockholders bring derivative suits on behalf of the corporation to enforce a corporate cause of action.<sup>4</sup>

Under *the Interim Rules of Procedure for Intra-Corporate Controversies*,<sup>5</sup> the following requisites must exist in order for derivative suits to prosper:

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 transaction subject of the action occurred and 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.

Here, the petition below was not a derivative suit filed on behalf of A&E Corporation but merely in petitioners' capacity as majority stockholders. None of the abovementioned requisites were present.

In *Ago Realty & Development Corporation v. Ago*,<sup>6</sup> the Court explained that majority stockholders who have undisputed corporate control cannot resort to derivative suits when there is nothing preventing the corporation itself from filing the case. The interests of the majority stockholders should have been protected by the board through affirmative action.

Verily, since A&E Corporation is the real party-in-interest, the case is dismissible due to petitioners' lack of personality to sue, hence, the dismissal is grounded on failure to state a cause of action.<sup>7</sup>

**WHEREFORE**, the petition is **DENIED**. The Resolutions of the Court of Appeals dated June 18, 2019 and October 10, 2019 in CA-G.R. SP No. 159553 are **AFFIRMED** with **MODIFICATION**. The Petition for Annulment of Judgment dated February 15, 2019 is **DISMISSED** due to petitioners' lack of personality to sue.

<sup>4</sup> *Ago Realty & Development Corporation v. Ago*, G.R. No. 210906, October 16, 2019.

<sup>5</sup> A.M. No. 01-2-04-SC, March 13, 2001.

<sup>6</sup> *Supra* note 4.

<sup>7</sup> *Gerve Magallanes v. Palmer Asia, Inc.*, G.R. No. 205179, July 18, 2014.

April 28, 2021

**SO ORDERED.” (J.Y. Lopez, J., designated additional member per Special Order No. 2822 dated April 7, 2021).**

By authority of the Court:



TERESITA AQUINO TUAZON  
Division Clerk of Court *by/oli*  
11 JUN 2021

\*GASTON & TAN LAW OFFICES (reg)  
Counsel for Petitioners  
Unit 407, 4<sup>th</sup> Floor, GC Corporate Plaza  
150 Legaspi Street, Legaspi Village  
1229 Makati City

\*ATTY. SOPHIA G. OBISPO (reg)  
Counsel for Respondents  
Unit 339, Eagle Court Condominium  
No. 26, Matalino Street, Diliman  
Quezon City

\*REGISTER OF DEEDS OF QUEZON CITY (reg)  
LRA Compound, East Avenue  
1100 Quezon City

HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 77  
1100 Quezon City  
(LRC Case No. R-QZN-18-01878-LR)

JUDGMENT DIVISION (x)  
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)  
LIBRARY SERVICES (x)  
[For uploading pursuant to A.M. No. 12-7-SC]

OFFICE OF THE CHIEF ATTORNEY (x)  
OFFICE OF THE REPORTER (x)  
PHILIPPINE JUDICIAL ACADEMY (x)  
Supreme Court, Manila

COURT OF APPEALS (x)  
Ma. Orosa Street  
Ermita, 1000 Manila  
CA-G.R. SP No. 159553

\*with copy of the CA Resolutions dated 18 June 2018 & 10 October 2019.  
**Please notify the Court of any change in your address.**  
GR249789. 4/28/2021(157)URES

**(157)URES**