

SECOND DIVISION

[G.R. No. 206649, July 20, 2016]

**FOREST HELLS GOLF AND COUNTRY CLUB, INC., REPRESENTED
BY RAINIER L. MADRID, IN A DERIVATIVE CAPACITY AS
SHAREHOLDER AND CLUB MEMBER, PETITIONER, VS. FIL-
ESTATE PROPERTIES, INC., AND FIL-ESTATE GOLF
DEVELOPMENT, INC., RESPONDENTS.**

D E C I S I O N

DEL CASTILLO, J.:

"A derivative action is a suit by a shareholder to enforce a corporate cause of action x x x on behalf of the corporation in order to protect or vindicate [its] rights [when its] officials refuse to sue, or are the ones to be sued, or hold control of [it]."^[1] Upon the enactment of Republic Act (RA) No. 8799, otherwise known as "The Securities Regulation Code," jurisdiction over such action now lies with the special commercial courts designated by this Court pursuant to A.M. No. 00- 11-03-SC promulgated on November 21, 2000.^[2]

This Petition for Review on *Certiorari*^[3] under Rule 45 of the Rules of Court assails the Orders dated May 14, 2012^[4] and February 1, 2013^[5] of the Regional Trial Court (RTC), Branch 74, Antipolo City, in Civil Case No. 10-9042.

Factual Antecedents

On March 31, 1993, Kingsville Construction and Development Corporation (Kingsville) and Kings Properties Corporation (KPC) entered into a project agreement with respondent Fil-Estate Properties, Inc. (FEPI), whereby the latter agreed to finance and cause the development of several parcels of land owned by Kingsville in Antipolo, Rizal, into Forest Hills Residential Estates and Golf and Country Club, a first-class residential area/golf-course/commercial center.^[6] Under the agreement, respondent FEPI was tasked to incorporate petitioner Forest Hills Golf and Country Club, Inc. (FHGCCCI) with an authorized stock of 3,600 shares; and to perform the development and construction work and other undertakings as full payment of its subscription to the authorized capital stock of the club.^[7] As to the remaining shares of the club, they agreed that these should be retained by Kingsville in exchange for the parcels of land used for the golf course development.^[8]

On July 10, 1995, respondent FEPI assigned its rights and obligations over the project to a related corporation, respondent Fil-Estate Golf Development, Inc. (FEGDI).^[9]

On July 19, 1996, Rainier L. Madrid (Madrid) purchased two Class "A" shares at the

secondary price of P3 80,000.00 each, and applied for a membership to the club for P25,000.00. ^[10]

Due to the delayed construction of the second 18-Hole Golf Course, Madrid wrote two demand letters dated October 29, 2009 and March 15, 2010 to the Board of Directors of petitioner FHGCCCI asking them to initiate the appropriate legal action against respondents FEPI and FEGDI.^[11] The Board of Directors, however, failed and/or refused to act on the demand letters.^[12]

Thus, on April 21, 2010, Madrid, in a derivative capacity on behalf of petitioner FHGCCCI, filed with the RTC of Antipolo City a Complaint for Specific Performance with Damages,^[13] docketed as Civil Case No. 10-9042, against respondents FEPI and FEGDI.^[14]

In their Answer with Compulsory Counterclaim,^[15] respondents FEPI and FEGDI argued that there is no cause of action against them as petitioner FHGCCCI failed to state the contractual and/or legal bases of their alleged obligation; that no prior demand was made to them; that the action is not a proper derivative suit as petitioner FHGCCCI failed to exhaust all remedies available under the articles of incorporation and by-laws; and that petitioner FHGCCCI failed to implead its Board of Directors as indispensable parties.

Petitioner FHGCCCI, in turn, filed a Reply^[16] arguing that the case does not involve an intra-corporate controversy and that the exhaustion of intra-corporate remedies was futile and useless as the Board of Directors of petitioner FHGCCCI also own respondent FEGDI.

Respondents FEPI and FEGDI filed a Rejoinder^[17] followed by a Motion^[18] to set their affirmative defenses for preliminary hearing.

Petitioner FHGCCCI filed a Motion^[19] for leave to amend its Complaint to implead KPC and Kingsville as additional defendants and to include Madrid as additional plaintiff in his personal capacity. Respondents FEPI and FEGDI opposed the Motion.^[20]

Ruling of the Regional Trial Court

On May 14, 2012, applying the relationship and nature of controversy tests in *Reyes v. Hon. RTC of Makati, Br. 142*^[21] and taking into account the fact that petitioner FHGCCCI denominated the Complaint as a derivative suit, the RTC issued an Order^[22] dismissing the case for lack of jurisdiction, without prejudice to the re-filing of the same with the proper special commercial court sitting at Binangonan, Rizal. Consequently, the motion for leave to amend the Complaint was mooted.

Feeling aggrieved, petitioner FHGCCCI moved for reconsideration^[23] but the RTC denied the same in its Order^[24] dated February 1, 2013.

Issue

Hence, petitioner FHGCCCI directly filed before this Court the instant Petition for

Review on *Certiorari*^[25] under Rule 45 of the Rules of Court on a pure question of law, raising the sole issue of:

WHETHER OR NOT PETITIONER [FHGCCCI'S] ORDINARY CIVIL SUIT FOR SPECIFIC PERFORMANCE WITH DAMAGES AGAINST RESPONDENTS [FEPI AND FEGDI] VIS-A-VIS THE LATTER'S OBLIGATION UNDER THE PROJECT AGREEMENT TO FULLY COMPLETE AND DEVELOP THE FOREST HELLS RESIDENTIAL ESTATES AND GOLF COURSE AND COUNTRY CLUB IS COGNIZABLE BY THE LOWER COURT AS A REGULAR COURT OR BY THE RTC-BINANGONAN, BRANCH 70, AS A SPECIAL COMMERCIAL COURT FOR INTRA-CORPORATE CONTROVERSIES.^[26]

Petitioner FHGCCVs Arguments

Petitioner FHGCCCI admits that it filed a derivative suit.^[27] However, it contends that not all derivative suits involve intra-corporate controversies.^[28] In this case, it filed a derivative suit for specific performance in order to enforce the project agreement between KPC, Kingsville, and respondents FEPI and FEGDI.^[29] And although respondent FEGDI is a stockholder of petitioner FHGCCCI, it argues that this does not make the instant case an intra-corporate controversy as the case was filed against respondents FEPI and FEGDI as developers, and not as stockholders of petitioner FHGCCCI.^[30] In fact, the causes of action stated in the Complaint do not involve intra-corporate controversies, nor do these involve the intra-corporate relations between and among the stockholders and the corporation's officials.^[31] Thus, the RTC seriously erred in applying the case of *Reyes*^[32] without clearly explaining why the instant case involves an intra-corporate controversy.^[33]

Respondents' Arguments

Respondents FEPI and FEGDI, on the other hand, reiterate the arguments raised in their Answer before the RTC, to wit: that petitioner FHGCCCI has no cause of action as it failed to present any contract upon which it can base its claim; that the filing of the case is premature as no prior demand was made to respondents FEPI and FEGDI; that the Complaint is not a proper derivative suit as petitioner FHGCCCI failed to exhaust all remedies available under the articles of incorporation and by-laws; and that petitioner FHGCCCI failed to implead its Board of Directors as indispensable parties.^[34] They also maintain that the instant case is an intra-corporate controversy as the allegations in the Complaint clearly show that petitioner FHGCCCI is suing respondents FEPI and FEGDI not only as developers but also as stockholders of petitioner FHGCCCI.^[35] And since the instant case involves an intra-corporate controversy, the RTC correctly dismissed the Complaint for lack of jurisdiction, as the RTC is not a special commercial court.^[36]

Our Ruling

The Petition lacks merit.

The Complaint, denominated as a

***derivative suit for specific performance,
falls under the jurisdiction of special
commercial courts.***

Petitioner FHGCCFs main contention is that its Complaint, although denominated as a derivative suit, does not fall under the jurisdiction of special commercial courts, as it does not involve an intra-corporate controversy.

We do not agree.

It is a fundamental principle that jurisdiction is conferred by law and is determined by the material allegations of the complaint, containing the concise statement of ultimate facts of a plaintiff's cause of action.^[37]

In this case, petitioner FHGCCCI alleged in its Complaint that:

PREFATORY

This is a derivative suit filed by Shareholder and Club Member Rainier Madrid on behalf of [petitioner FHGCCCI] to compel [respondents FEPI and FEGDI], to finish the construction and complete development of Club's Arnold Palmer 2nd Nine-Holes Golf Course and the adjunct Country Club Premises.

Despite repeated demands on FHGCCCI, which appears **controlled and managed by interlocking directors of [respondents FEPI and FEGDI] as an "OLD BOYS CLUB," and therefore guilty of grave conflict of interest to initiate legal actions against developer [respondent] FEGDI** vis-a-vis the completion of the Club's Arnold Palmer 2nd Nine-Holes Golf Course and the promised Country Club Facilities, **FHGCCCI has failed, shirked, and refused to sue the [respondents FEPI and FEGDI].**

This BAD FAITH inaction and refusal to sue [respondents FEPI and FEGDI] by the FHGCCCI Board of Directors is definitely prejudicial to FHGCCCI and its members as they have been long deprived the maximum use of the promised Full 36-Hole Golf Course and Country Club Amenities, thereby rendering them in fundamental and material breach of their SEC Disclosure Statements, Marketing and Sales Contracts.

The FHGCCCI Board of Directors [are] guilty of grave conflict of interest as Founder Shareholders Noel M. Carifio, Robert John L. Sobrepefia, Ferdinand T. Santos and Enrique Sobrepena, Jr. are also the majority Board of Directors of [respondent] FEPI and later [respondent] FEGDI, who for more than ten (10) years NOW has failed and refused to complete the Project for which they should have sued [respondents] FEPI [and] FEGDI as early as 2000.

Indeed, the control, exclusive management and operations of FHGCCCI,

which should have been turned-over to the General Membership, has been illegally withheld, retained and continued to be enjoyed by FHGCCCI Board of Directors via their abusive, void and illegal Founder's Shares, subject now of a separate suit to compel turnover of the FHGCCCI to its General Membership.

The patent interlocking directorship of FHGCCCI and [respondents] FEPI /FEGDI sufficiently shows the abuse, high handed and condescending strong arm posture of FHGCCCI Board of Directors in failing or refraining from suing [respondents] FEPI [and] FEGDI as the developer for the full and total completion of [the] 36-Hole Golf Course and adjunct Country Club facilities.

HENCE, THIS DERIVATIVE SUIT.

x x x x

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

x x x x

4. On June 29, 1995, **[respondent] FEPI incorporated the Golf and Country Club Company** - [FHGCCf] x x x.

Per FHGCCCI's Articles of Incorporation, fifty (50%) percent of its authorized member shares appears to have been distributed as follows:

SUBSCRIBERS	NUMBER AND KIND OF SHARES
1. Noel M. Cariño	1 Founder's Share
2. Robert John L. Sobrepeña	1 Founder's Share
3. Ferdinand T. Santos	1 Founder's Share
4. Sabrina T.Santos	1 Founder's Share
5. Enrique Sobrepeña, Jr.	1 Founder's Share
6. Johnson Ong	1 Founder's Share
7. Romeo G. Carlos	1 Founder's Share
8. Manuel Yu	1 Founder's Share
9. FEGDI	537 Class "A", 190 Class "B", 292 Class "C", 146 Class "D"; total = 1165