

FIRST DIVISION

[G.R. No. 150793, November 19, 2004]

**FRANCIS CHUA, PETITIONER, VS. HON. COURT OF APPEALS AND
LYDIA C. HAO, RESPONDENTS.**

DECISION

QUISUMBING, J.:

Petitioner assails the **Decision**,^[1] dated June 14, 2001, of the Court of Appeals in CA-G.R. SP No. 57070, affirming the **Order**, dated October 5, 1999, of the Regional Trial Court (RTC) of Manila, Branch 19. The RTC reversed the **Order**, dated April 26, 1999, of the Metropolitan Trial Court (MeTC) of Manila, Branch 22. Also challenged by herein petitioner is the CA **Resolution**,^[2] dated November 20, 2001, denying his Motion for Reconsideration.

The facts, as culled from the records, are as follows:

On February 28, 1996, private respondent Lydia Hao, treasurer of Siena Realty Corporation, filed a complaint-affidavit with the City Prosecutor of Manila charging Francis Chua and his wife, Elsa Chua, of four counts of falsification of public documents pursuant to Article 172^[3] in relation to Article 171^[4] of the Revised Penal Code. The charge reads:

That on or about May 13, 1994, in the City of Manila, Philippines, the said accused, being then a private individual, did then and there willfully, unlawfully and feloniously commit acts of falsification upon a public document, to wit: the said accused prepared, certified, and falsified the Minutes of the Annual Stockholders meeting of the Board of Directors of the Siena Realty Corporation, duly notarized before a Notary Public, Atty. Juanito G. Garcia and entered in his Notarial Registry as Doc No. 109, Page 22, Book No. IV and Series of 1994, and therefore, a public document, by making or causing it to appear in said Minutes of the Annual Stockholders Meeting that one LYDIA HAO CHUA was present and has participated in said proceedings, when in truth and in fact, as the said accused fully well knew that said Lydia C. Hao was never present during the Annual Stockholders Meeting held on April 30, 1994 and neither has participated in the proceedings thereof to the prejudice of public interest and in violation of public faith and destruction of truth as therein proclaimed.

CONTRARY TO LAW.^[5]

Thereafter, the City Prosecutor filed the Information docketed as Criminal Case No. 285721^[6] for falsification of public document, before the Metropolitan Trial Court (MeTC) of Manila, Branch 22, against Francis Chua but dismissed the accusation

against Elsa Chua.

Herein petitioner, Francis Chua, was arraigned and trial ensued thereafter.

During the trial in the MeTC, private prosecutors Atty. Evelyn Sua-Kho and Atty. Ariel Bruno Rivera appeared as private prosecutors and presented Hao as their first witness.

After Hao's testimony, Chua moved to exclude complainant's counsels as private prosecutors in the case on the ground that Hao failed to allege and prove any civil liability in the case.

In an **Order**, dated April 26, 1999, the MeTC granted Chua's motion and ordered the complainant's counsels to be excluded from actively prosecuting Criminal Case No. 285721. Hao moved for reconsideration but it was denied.

Hence, Hao filed a petition for certiorari docketed as SCA No. 99-94846,^[7] entitled *Lydia C. Hao, in her own behalf and for the benefit of Siena Realty Corporation v. Francis Chua, and the Honorable Hipolito dela Vega, Presiding Judge, Branch 22, Metropolitan Trial Court of Manila*, before the Regional Trial Court (RTC) of Manila, Branch 19.

The RTC gave due course to the petition and on October 5, 1999, the RTC in an order reversed the MeTC Order. The dispositive portion reads:

WHEREFORE, the petition is GRANTED. The respondent Court is ordered to allow the intervention of the private prosecutors in behalf of petitioner Lydia C. Hao in the prosecution of the civil aspect of Crim. Case No. 285721, before Br. 22 [MeTC], Manila, allowing Attys. Evelyn Sua-Kho and Ariel Bruno Rivera to actively participate in the proceedings.

SO ORDERED.^[8]

Chua moved for reconsideration which was denied.

Dissatisfied, Chua filed before the Court of Appeals a petition for certiorari. The petition alleged that the lower court acted with grave abuse of discretion in: (1) refusing to consider material facts; (2) allowing Siena Realty Corporation to be impleaded as co-petitioner in SCA No. 99-94846 although it was not a party to the criminal complaint in Criminal Case No. 285721; and (3) effectively amending the information against the accused in violation of his constitutional rights.

On June 14, 2001, the appellate court promulgated its assailed Decision denying the petition, thus:

WHEREFORE, premises considered, the petition is hereby DENIED DUE COURSE and DISMISSED. The Order, dated October 5, 1999 as well as the Order, dated December 3, 1999, are hereby AFFIRMED *in toto*.

SO ORDERED.^[9]

Petitioner had argued before the Court of Appeals that respondent had no authority whatsoever to bring a suit in behalf of the Corporation since there was no Board Resolution authorizing her to file the suit.

For her part, respondent Hao claimed that the suit was brought under the concept of a derivative suit. Respondent maintained that when the directors or trustees refused to file a suit even when there was a demand from stockholders, a derivative suit was allowed.

The Court of Appeals held that the action was indeed a derivative suit, for it alleged that petitioner falsified documents pertaining to projects of the corporation and made it appear that the petitioner was a stockholder and a director of the corporation. According to the appellate court, the corporation was a necessary party to the petition filed with the RTC and even if private respondent filed the criminal case, her act should not divest the Corporation of its right to be a party and present its own claim for damages.

Petitioner moved for reconsideration but it was denied in a Resolution dated November 20, 2001.

Hence, this petition alleging that the Court of Appeals committed reversible errors:

- I. ... IN RULING THAT LYDIA HAO'S FILING OF CRIMINAL CASE NO. 285721 WAS IN THE NATURE OF A DERIVATIVE SUIT
- II. ... IN UPHOLDING THE RULING OF JUDGE DAGUNA THAT SIENA REALTY WAS A PROPER PETITIONER IN SCA NO. [99-94846]
- III. ... IN UPHOLDING JUDGE DAGUNA'S DECISION ALLOWING LYDIA HAO'S COUNSEL TO CONTINUE AS PRIVATE PROSECUTORS IN CRIMINAL CASE NO. 285721
- IV. ... IN [OMITTING] TO CONSIDER AND RULE UPON THE ISSUE THAT JUDGE DAGUNA ACTED IN GRAVE ABUSE OF DISCRETION IN NOT DISMISSING THE PETITION IN SCA NO. [99-94846] FOR BEING A SHAM PLEADING.^[10]

The pertinent issues in this petition are the following: (1) Is the criminal complaint in the nature of a derivative suit? (2) Is Siena Realty Corporation a proper petitioner in SCA No. 99-94846? and (3) Should private prosecutors be allowed to actively participate in the trial of Criminal Case No. 285721.

On the first issue, petitioner claims that the Court of Appeals erred when (1) it sustained the lower court in giving due course to respondent's petition in SCA No. 99-94846 despite the fact that the Corporation was not the private complainant in Criminal Case No. 285721, and (2) when it ruled that Criminal Case No. 285721 was in the nature of a derivative suit.

Petitioner avers that a derivative suit is by nature peculiar only to intra-corporate proceedings and cannot be made part of a criminal action. He cites the case of *Western Institute of Technology, Inc. v. Salas*,^[11] where the court said that an appeal on the civil aspect of a criminal case cannot be treated as a derivative suit.

Petitioner asserts that in this case, the civil aspect of a criminal case cannot be treated as a derivative suit, considering that Siena Realty Corporation was not the private complainant.

Petitioner misapprehends our ruling in *Western Institute*. In that case, we said:

Here, however, the case is not a derivative suit but is merely an appeal on the civil aspect of Criminal Cases Nos. 37097 and 37098 filed with the RTC of Iloilo for estafa and falsification of public document. Among 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. . . . This was not complied with by the petitioners either in their complaint before the court *a quo* nor in the instant petition which, in part, merely states that "this is a petition for review on *certiorari* on pure questions of law to set aside a portion of the RTC decision in Criminal Cases Nos. 37097 and 37098" since the trial court's judgment of acquittal failed to impose civil liability against the private respondents. By no amount of equity considerations, if at all deserved, can a mere appeal on the civil aspect of a criminal case be treated as a derivative suit.^[12]

Moreover, in *Western Institute*, we said that a mere appeal in the civil aspect cannot be treated as a derivative suit because the appeal lacked the basic requirement that it must be alleged in the complaint that the shareholder is suing on a derivative cause of action for and in behalf of the corporation and other shareholders who wish to join.

Under Section 36^[13] of the Corporation Code, read in relation to Section 23,^[14] where a corporation is an injured party, its power to sue is lodged with its board of directors or trustees.^[15] An individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stocks 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.^[16]

A derivative action is a suit by a shareholder to enforce a corporate cause of action. The corporation is a necessary party to the suit. And the relief which is granted is a judgment against a third person in favor of the corporation. Similarly, if a corporation has a defense to an action against it and is not asserting it, a stockholder may intervene and defend on behalf of the corporation.^[17]

Under the Revised Penal Code, every person criminally liable for a felony is also civilly liable.^[18] When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action, unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.^[19]

In Criminal Case No. 285721, the complaint was instituted by respondent against

petitioner for falsifying corporate documents whose subject concerns corporate projects of Siena Realty Corporation. Clearly, Siena Realty Corporation is an offended party. Hence, Siena Realty Corporation has a cause of action. And the civil case for the corporate cause of action is deemed instituted in the criminal action.

However, the board of directors of the corporation in this case did not institute the action against petitioner. Private respondent was the one who instituted the action. Private respondent asserts that she filed a derivative suit in behalf of the corporation. This assertion is inaccurate. Not every suit filed in behalf of the corporation is a derivative suit. For a derivative suit to prosper, it is required that the minority stockholder suing for and on behalf of the corporation must allege in his complaint that he is suing on a derivative cause of action on behalf of the corporation and all other stockholders similarly situated who may wish to join him in the suit.^[20] It is a condition *sine qua non* that the corporation be impleaded as a party because not only is the corporation an indispensable party, but it is also the present rule that it must be served with process. 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 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* against it.^[21]

In the criminal complaint filed by herein respondent, nowhere is it stated that she is filing the same in behalf and for the benefit of the corporation. Thus, the criminal complaint including the civil aspect thereof could not be deemed in the nature of a derivative suit.

We turn now to the second issue, is the corporation a proper party in the petition for certiorari under Rule 65 before the RTC? Note that the case was titled "*Lydia C. Hao, in her own behalf and for the benefit of Siena Realty Corporation v. Francis Chua, and the Honorable Hipolito dela Vega, Presiding Judge, Branch 22, Metropolitan Trial Court of Manila.*" Petitioner before us now claims that the corporation is not a private complainant in Criminal Case No. 285721, and thus cannot be included as appellant in SCA No. 99-94846.

Petitioner invokes the case of *Ciudad Real & Dev't. Corporation v. Court of Appeals*.^[22] In *Ciudad Real*, it was ruled that the Court of Appeals committed grave abuse of discretion when it upheld the standing of Magdiwang Realty Corporation as a party to the petition for certiorari, even though it was not a party-in-interest in the civil case before the lower court.

In the present case, respondent claims that the complaint was filed by her not only in her personal capacity, but likewise for the benefit of the corporation. Additionally, she avers that she has exhausted all remedies available to her before she instituted the case, not only to claim damages for herself but also to recover the damages caused to the company.

Under Rule 65 of the Rules of Civil Procedure,^[23] when a trial court commits a grave abuse of discretion amounting to lack or excess of jurisdiction, the person aggrieved can file a special civil action for certiorari. The aggrieved parties in such a case are the State and the private offended party or complainant.^[24]