Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NESTOR CHING and ANDREW WELLINGTON, Petitioners,	**G.R. No. 174353**
	Present:
- *versus* -	VELASCO, JR.,* LEONARDO-DE CASTRO,** Acting Chairperson, BERSAMIN, PEREZ, and PERLAS-BERNABE, *JJ.*
SUBIC BAY GOLF AND COUNTRY CLUB, INC., HU HO HSIU LIEN alias SUSAN HU, HU TSUNG CHIEH alias JACK HU, HU TSUNG HUI, HU TSUNG TZU and REYNALD R. SUAREZ, Respondents.	Promulgated: SEP 10 2014

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DECISION

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the review of the Decision[1] dated October 27, 2005 of the Court of Appeals in CA-G.R. CV No. 81441, which affirmed the Order[2] dated July 8, 2003 of the Regional Trial Court (RTC), Branch 72 of Olongapo City in Civil Case No. 03-001 dismissing the Complaint filed by herein petitioners.

On February 26, 2003, petitioners Nestor Ching and Andrew Wellington filed a Complaint[3] with the RTC of Olongapo City on behalf of the members of Subic Bay Golf and Country Club, Inc. (SBGCCI) against the said country club and its Board of Directors and officers under the

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* Per Special Order No. 1772 dated August 28, 2014.

** Per Special Order No. 1771 dated August 28, 2014.

1 *Rollo*, pp. 31-44; penned by Associate Justice Bienvenido L. Reyes (now a member of this Court) with Associate Justices Godardo A. Jacinto and Arturo D. Brion (now a member of this Court), concurring.

2 Id. at 58-61.

3 Id. at 62-70.

provisions of Presidential Decree No. 902-A in relation to Section 5.2 of the Securities Regulation Code. The Subic Bay Golfers and Shareholders Incorporated (SBGSI), a corporation composed of shareholders of the defendant corporation, was also named as plaintiff. The officers impleaded as defendants were the following: (1) its President, Hu Ho Hsiu Lien alias Susan Hu; (2) its treasurer, Hu Tsung Chieh alias Jack Hu; (3) corporate secretary Reynald Suarez; and (4) directors Hu Tsung Hui and Hu Tsung Tzu. The case was docketed as Civil Case No. 03-001.

The complaint alleged that the defendant corporation sold shares to plaintiffs at US$22,000.00 per share, presenting to them the Articles of Incorporation which contained the following provision:

> No profit shall inure to the exclusive benefit of any of its shareholders, hence, no dividends shall be declared in their favor. Shareholders shall be entitled only to a pro-rata share of the assets of the Club at the time of its dissolution or liquidation.[4]

However, on June 27, 1996, an amendment to the Articles of Incorporation was approved by the Securities and Exchange Commission (SEC), wherein the above provision was changed as follows:

> No profit shall inure to the exclusive benefit of any of its shareholders, hence, no dividends shall be declared in their favor. In accordance with the Lease and Development Agreement by and between Subic Bay Metropolitan Authority and The Universal International Group of Taiwan, where the golf course and clubhouse component thereof was assigned to the Club, **the shareholders shall not have proprietary rights or interests over the properties of the Club**.[5] x x x. (Emphasis supplied.)

Petitioners claimed in the Complaint that defendant corporation did not disclose to them the above amendment which allegedly makes the shares non-proprietary, as it takes away the right of the shareholders to participate in the pro-rata distribution of the assets of the corporation after its dissolution. According to petitioners, this is in fraud of the stockholders who only discovered the amendment when they filed a case for injunction to restrain the corporation from suspending their rights to use all the facilities of the club. Furthermore, petitioners alleged that the Board of Directors and officers of the corporation did not call any stockholders' meeting from the time of the incorporation, in violation of Section 50 of the Corporation Code and the By-Laws of the corporation. Neither did the defendant directors and officers furnish the stockholders with the financial statements of the corporation nor the financial report of the operation of the corporation in violation of Section 75 of the Corporation Code. Petitioners also claim that on August 15, 1997, SBGCCI presented to the SEC an amendment to the By-Laws of the corporation suspending the voting rights of the shareholders

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4 Id. at 94.

5 Id. at 103.

except for the five founders' shares. Said amendment was allegedly passed without any stockholders' meeting or notices to the stockholders in violation of Section 48 of the Corporation Code.

The Complaint furthermore enumerated several instances of fraud in the management of the corporation allegedly committed by the Board of Directors and officers of the corporation, particularly:

> a. The Board of Directors and the officers of the corporation did not indicate in its financial report for the year 1999 the amount of ₱235,584,000.00 collected from the subscription of 409 shareholders who paid U.S.$22,000.00 for one (1) share of stock at the then prevailing rate of ₱26.18 to a dollar. The stockholders were not informed how these funds were spent or its whereabouts.
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> b. The Corporation has been collecting green fees from the patrons of the golf course at an average sum of ₱1,600.00 per eighteen (18) holes but the income is not reported in their yearly report. The yearly report for the year 1999 contains the report of the Independent Public Accountant who stated that the company was incorporated on April 1, 1996 but has not yet started its regular business operation. The golf course has been in operation since 1997 and as such has collected green fees from non-members and foreigners who played golf in the club. There is no financial report as to the income derived from these sources.
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> c. There is reliable information that the Defendant Corporation has not paid its rentals to the Subic Bay Metropolitan Authority which up to the present is estimated to be not less than one (1) million U.S. Dollars. Furthermore, the electric billings of the corporation [have] not been paid which amounts also to several millions of pesos.
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> d. That the Supreme Court sustained the pre-termination of its contract with the SBMA and presently the club is operating without any valid contract with SBMA. The defendant was ordered by the Supreme Court to yield the possession, the operation and the management of the golf course to SBMA. Up to now the defendants [have] defied this Order.
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> e. That the value of the shares of stock of the corporation has drastically declined from its issued value of U.S.$22,000.00 to only Two Hundred Thousand Pesos, (₱200,000.00) Philippine Currency. The shareholders [have] lost in terms of investment the sum estimated to be more than two hundred thousand pesos. This loss is due to the fact that the Club is mismanaged and the golf course is poorly maintained. Other amenities of the Club has (sic) not yet been constructed and are not existing despite the lapse of more than five (5) years from the time the stocks were offered for sale to the public. The cause of the decrease in value of the shares of stocks is the fraudulent mismanagement of the club.[6]

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6 Id. at 66-67.

Alleging that the stockholders suffered damages as a result of the fraudulent mismanagement of the corporation, petitioners prayed in their Complaint for the following:

> **WHEREFORE**, it is most respectfully prayed that upon the filing of this case a temporary restraining order be issued enjoining the defendants from acting as Officers and Board of Directors of the Corporation. After hearing[,] a writ of preliminary injunction be issued enjoining defendants to act as Board of Directors and Officers of the Corporation. In the meantime a Receiver be appointed by the Court to act as such until a duly constituted Board of Directors and Officers of the Corporation be elected and qualified.
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> That defendants be ordered to pay the stockholders damages in the sum of Two Hundred Thousand Pesos each representing the decrease in value of their shares of stocks plus the sum of ₱100,000.00 as legal expense and attorney's fees, as well as appearance fee of ₱4,000.00 per hearing.[7]

In their Answer, respondents specifically denied the allegations of the Complaint and essentially averred that:

> (a) The subscriptions of the 409 shareholders were paid to Universal International Group Development Corporation (UIGDC), the majority shareholder of SBGCCI, from whom plaintiffs and other shareholders bought their shares;[8]
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> (b) Contrary to the allegations in the Complaint, said subscriptions were reflected in SBGCCI's balance sheets for the fiscal years 1998 and 1999;[9]
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> (c) Plaintiffs were never presented the original Articles of Incorporation of SBGCCI since their shares were purchased after the amendment of the Articles of Incorporation and such amendment was publicly known to all members prior and subsequent to the said amendment;[10]
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> (d) Shareholders' meetings had been held and the corporate acts complained of were approved at shareholders' meetings;[11]
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> (e) Financial statements of SBGCCI had always been presented to shareholders justifiably requesting copies;[12]

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7 Id. at 68.
8 Id. at 137.
9 Id.
10 Id. at 138.
11 Id.
12 Id.

> (f) Green fees collected were reported in SBGCCI's audited financial statements;[13]
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> (g) Any unpaid rentals are the obligation of UIGDC with SBMA and SBGCCI continued to operate under a valid contract with the SBMA;[14] and
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> (h) SBGCCI's Board of Directors was not guilty of any mismanagement and in fact the value of members' shares have increased.[15]

Respondents further claimed by way of defense that petitioners failed (a) to show that it was authorized by SBGSI to file the Complaint on the said corporation's behalf; (b) to comply with the requisites for filing a derivative suit and an action for receivership; and (c) to justify their prayer for injunctive relief since the Complaint may be considered a nuisance or harassment suit under Section 1(b), Rule 1 of the Interim Rules of Procedure for Intra-Corporate Controversies.[16] Thus, they prayed for the dismissal of the Complaint.

On July 8, 2003, the RTC issued an Order dismissing the Complaint. The RTC held that the action is a derivative suit, explaining thus:

> The Court finds that this case is intended not only for the benefit of the two petitioners. This is apparent from the caption of the case which reads Nestor Ching, Andrew Wellington and the Subic Bay Golfers and Shareholders, Inc., for and in behalf of all its members as petitioners.
>
> This is also shown in the allegations of the petition[.] x x x.
>
> On the bases of these allegations of the petition, the Court finds that the case is a derivative suit. Being a derivative suit in accordance with Rule 8 of the Interim Rules, the stockholders and members may bring an action in the name of the corporation or association provided that he (the minority stockholder) exerted all reasonable efforts and allege[d] the same with particularity in the complaint to exhaust of (sic) all remedies available under the articles of incorporation, by-laws or rules governing the corporation or partnership to obtain the reliefs he desires. An examination of the petition does not show any allegation that the petitioners applied for redress to the Board of Directors of respondent corporation there being no demand, oral or written on the respondents to address their complaints. Neither did the petitioners appl[y] for redress to the stockholders of the respondent corporation and ma[k]e an effort to obtain action by the stockholders as a whole. Petitioners should have asked the Board of Directors of the respondent corporation and/or its stockholders to hold a meeting for the taking up of the petitioners' rights in this petition.[17]

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13 Id. at 139.
14 Id.
15 Id. at 139-140.
16 Id. at 140-148.
17 Id. at 58-59.

The RTC held that petitioners failed to exhaust their remedies within the respondent corporation itself. The RTC further observed that petitioners Ching and Wellington were not authorized by their co-petitioner Subic Bay Golfers and Shareholders Inc. to file the Complaint, and therefore had no personality to file the same on behalf of the said shareholders' corporation. According to the RTC, the shareholdings of petitioners comprised of two shares out of the 409 alleged outstanding shares or 0.24% is an indication that the action is a nuisance or harassment suit which may be dismissed either *motu proprio* or upon motion in accordance with Section 1(b) of the Interim Rules of Procedure for Intra-Corporate Controversies.[18]

Petitioners Ching and Wellington elevated the case to the Court of Appeals, where it was docketed as CA-G.R. CV No. 81441. On October 27, 2005, the Court of Appeals rendered the assailed Decision affirming that of the RTC.

Hence, petitioners resort to the present Petition for Review, wherein they argue that the Complaint they filed with the RTC was not a derivative suit. They claim that they filed the suit in their own right as stockholders against the officers and Board of Directors of the corporation under Section 5(a) of Presidential Decree No. 902-A, which provides:

> 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:
>
> (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.

According to petitioners, the above provision (which should be read in relation to Section 5.2 of the Securities Regulation Code which transfers jurisdiction over such cases to the RTC) allows any stockholder to file a

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[18] (b) *Prohibition against nuisance and harassment suits.* – Nuisance and harassment suits are prohibited. In determining whether a suit is a nuisance or harassment suit, the court shall consider, among others, the following:

(1) The extent of the shareholding or interest of the initiating stockholder or member;
(2) Subject matter of the suit;
(3) Legal and factual basis of the complaint;
(4) Availability of appraisal rights for the act or acts complained of; and
(5) Prejudice or damage to the corporation, partnership, or association in relation to the relief sought.

In case of nuisance or harassment suits, the court may, *motu proprio* or upon motion, forthwith dismiss the case.

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.

In the alternative, petitioners allege that if this Court rules that the Complaint is a derivative suit, it should nevertheless reverse the RTC's dismissal thereof on the ground of failure to exhaust remedies within the corporation. Petitioners cite *Republic Bank v. Cuaderno*[19] wherein the Court allowed the derivative suit even without the exhaustion of said remedies as it was futile to do so since the Board of Directors were all members of the same family. Petitioners also point out that in *Cuaderno* this Court held that the fact that therein petitioners had only one share of stock does not justify the denial of the relief prayed for.

To refute the lower courts' ruling that there had been non-exhaustion of intra-corporate remedies on petitioners' part, they claim that they filed in Court a case for Injunction docketed as Civil Case No. 103-0-01, to restrain the corporation from suspending their rights to use all the facilities of the club, on the ground that the club cannot collect membership fees until they have completed the amenities as advertised when the shares of stock were sold to them. They allegedly asked the Club to produce the minutes of the meeting of the Board of Directors allowing the amendments of the Articles of Incorporation and By-Laws. Petitioners likewise assail the dismissal of the Complaint for being a harassment or nuisance suit before the presentation of evidence. They claim that the evidence they were supposed to present will show that the members of the Board of Directors are not qualified managers of a golf course.

We find the petition unmeritorious.

At the outset, it should be noted that the Complaint in question appears to have been filed only by the two petitioners, namely Nestor Ching and Andrew Wellington, who each own one stock in the respondent corporation SBGCCI. While the caption of the Complaint also names the "Subic Bay Golfers and Shareholders Inc. for and in behalf of all its members," petitioners did not attach any authorization from said alleged corporation or its members to file the Complaint. Thus, the Complaint is deemed filed only by petitioners and not by SBGSI.

On the issue of whether the Complaint is indeed a derivative suit, we are mindful of the doctrine that the nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted

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[19] 125 Phil. 1076, 1082 (1967).

therein.[20] We have also held that the body rather than the title of the complaint determines the nature of an action.[21]

In *Cua, Jr. v. Tan*,[22] the Court previously elaborated on the distinctions among a derivative suit, an individual suit, and a representative or class suit:

> A derivative suit must be differentiated from individual and representative or class suits, thus:
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> > "Suits by stockholders or members of a corporation based on wrongful or fraudulent acts of directors or other persons may be classified into individual suits, class suits, and derivative suits. Where a stockholder or member is denied the right of inspection, his suit would be **individual** because the wrong is done to him personally and not to the other stockholders or the corporation. Where the wrong is done to a group of stockholders, as where preferred stockholders' rights are violated, a **class or representative suit** will be proper for the protection of all stockholders belonging to the same group. But where the acts complained of constitute a wrong to the corporation itself, the cause of action belongs to the corporation and not to the individual stockholder or member. 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. Otherwise, not only would the theory of separate entity be violated, but there would be multiplicity of suits as well as a violation of the priority rights of creditors. Furthermore, there is the difficulty of determining the amount of damages that should be paid to each individual stockholder.
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> > 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

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20 *Go v. Distinction Properties Development and Construction, Inc.*, G.R. No. 194024, April 25, 2012, 671 SCRA 461, 471-472.

21 *Reyes v. Hon. Regional Trial Court of Makati, Branch 142*, 583 Phil. 591, 612 (2008).

22 G.R. Nos. 181455-56, December 4, 2009, 607 SCRA 645, 690-693.

> 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."
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> x x x x

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.' x x x. 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. x x x. **[T]he two actions are mutually exclusive: *i.e.*, the right of action and recovery belongs to either the *shareholders* (direct action) *651 or the *corporation* (derivative action)**." x x x.
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> Thus, in *Nelson v. Anderson* (1999), x x x, the **289 minority shareholder alleged that the other shareholder of the corporation negligently managed the business, resulting in its total failure. x x x. 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. x x x. A derivative action would have been appropriate if its responsible officials had refused or failed to act." x x x. The court went on to note that the damages shown at trial were the loss of corporate profits. x x x. 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." (Citations omitted.)

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 SBGCCI.

The causes of action pleaded by petitioners do not accrue to a single shareholder or a class of shareholders but to the corporation itself.

However, as minority stockholders, petitioners do not have any statutory right to override the business judgments of SBGCCI's officers and Board of Directors on the ground of the latter's alleged lack of qualification to manage a golf course. Contrary to the arguments of petitioners, Presidential Decree No. 902-A, which is entitled REORGANIZATION OF THE SECURITIES AND EXCHANGE COMMISSION WITH ADDITIONAL POWERS AND PLACING THE SAID AGENCY UNDER THE ADMINISTRATIVE SUPERVISION OF THE OFFICE OF THE PRESIDENT, does not grant minority stockholders a cause of action against waste and diversion by the Board of Directors, but merely identifies the jurisdiction of the SEC over actions already authorized by law or jurisprudence. It is settled that a stockholder's right to institute a derivative suit is not based on any express provision of the Corporation Code, or even the Securities Regulation Code, but is 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.[23]

At this point, we should take note that while there were allegations in the Complaint of fraud in their subscription agreements, such as the misrepresentation of the Articles of Incorporation, petitioners do not pray for the rescission of their subscription or seek to avail of their appraisal rights. Instead, they ask that defendants be enjoined from managing the corporation and to pay damages for their mismanagement. Petitioners' only possible cause of action as minority stockholders against the actions of the Board of Directors is the common law right to file a derivative suit. The legal standing of minority stockholders to bring derivative suits is not a statutory right, there being no provision in the Corporation Code or related statutes authorizing the same, but is instead a product of jurisprudence based on equity. However, a derivative suit cannot prosper without first complying with the legal requisites for its institution.[24]

Section 1, Rule 8 of the Interim Rules of Procedure Governing Intra-Corporate Controversies imposes the following requirements for derivative suits:

> (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;
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> (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;

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23 *Yu v. Yukayguan*, 607 Phil. 581, 610 (2009).

24 Id.

> (3) No appraisal rights are available for the act or acts complained of; and
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> (4) The suit is not a nuisance or harassment suit.

The RTC dismissed the Complaint for failure to comply with the second and fourth requisites above.

Upon a careful examination of the Complaint, this Court finds that the same should not have been dismissed on the ground that it is a nuisance or harassment suit. Although the shareholdings of petitioners are indeed only two out of the 409 alleged outstanding shares or 0.24%, the Court has held that it is enough that a member or a minority of stockholders file a derivative suit for and in behalf of a corporation.[25]

With regard, however, to the second requisite, we find that petitioners failed to state with particularity in the Complaint that they had exerted all reasonable efforts to exhaust all remedies available under the articles of incorporation, by-laws, and laws or rules governing the corporation to obtain the relief they desire. The Complaint contained no allegation whatsoever of any effort to avail of intra-corporate remedies. Indeed, even if petitioners thought it was futile to exhaust intra-corporate remedies, they should have stated the same in the Complaint and specified the reasons for such opinion. Failure to do so allows the RTC to dismiss the Complaint, even *motu proprio*, in accordance with the Interim Rules. The requirement of this allegation in the Complaint is not a useless formality which may be disregarded at will. We ruled in *Yu v. Yukayguan*[26]:

> The wordings of Section 1, Rule 8 of the Interim Rules of Procedure Governing Intra-Corporate Controversies are simple and do not leave room for statutory construction. The second paragraph thereof requires that the stockholder filing a derivative suit should have exerted **all reasonable efforts 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; and to **allege such fact with particularity** in the complaint. The obvious intent behind the rule is to make the derivative suit the final recourse of the stockholder, after all other remedies to obtain the relief sought had failed.

WHEREFORE, the Petition for Review is hereby **DENIED**. The Decision of the Court of Appeals in CA-G.R. CV No. 81441 which affirmed the Order of the Regional Trial Court (RTC) of Olongapo City dismissing the Complaint filed thereon by herein petitioners is **AFFIRMED**.

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25 *Majority Stockholders of Ruby Industrial Corporation v. Lim*, G.R. No. 165887, June 6, 2011, 650 SCRA 461, 497.

26 Supra note 23 at 612.

SO ORDERED.

TERESITA J. LEONARDO-DE CASTRO
Acting Chairperson, Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-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.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.

ANTONIO T. CARPIO
Acting Chief Justice

CERTIFIED TRUE COPY:

EDGAR O. ARICHETA
Division Clerk of Court
First Division