Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

STRONGHOLD INSURANCE COMPANY, INC., Petitioner,	**G.R. No. 173297**
	Present:
- versus -	SERENO, *C.J.*, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR., and REYES, *JJ.*
TOMAS CUENCA, MARCELINA CUENCA, MILAGROS CUENCA, BRAMIE T. TAYACTAC, and MANUEL D. MARAÑON, JR., Respondents.	Promulgated: MAR 0 6 2013

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D E C I S I O N

BERSAMIN, *J.*:

The personality of a corporation is distinct and separate from the personalities of its stockholders. Hence, its stockholders are not themselves the real parties in interest to claim and recover compensation for the damages arising from the wrongful attachment of its assets. Only the corporation is the real party in interest for that purpose.

The Case

Stronghold Insurance Company, Inc. (Stronghold Insurance), a domestic insurance company, assails the decision promulgated on January 31, 2006,[1] whereby the Court of Appeals (CA) in CA-G.R. CV No. 79145 affirmed the judgment rendered on April 28, 2003 by the Regional Trial Court in Parañaque City (RTC) holding Stronghold Insurance and respondent Manuel D. Marañon, Jr. jointly and solidarily liable for damages to respondents Tomas Cuenca, Marcelina Cuenca, Milagros Cuenca

[1] *Rollo*, pp. 48-61; penned by Associate Justice Mariano C. del Castillo (now a Member of the Court), and concurred in by Associate Justice Conrado M. Vasquez, Jr. (later Presiding Justice/retired) and Associate Justice Magdangal M. de Leon.

(collectively referred to as Cuencas), and Bramie Tayactac, upon the latter's claims against the surety bond issued by Stronghold Insurance for the benefit of Marañon.[2]

Antecedents

On January 19, 1998, Marañon filed a complaint in the RTC against the Cuencas for the collection of a sum of money and damages. His complaint, docketed as Civil Case No. 98-023, included an application for the issuance of a writ of preliminary attachment.[3] On January 26, 1998, the RTC granted the application for the issuance of the writ of preliminary attachment conditioned upon the posting of a bond of ₱1,000,000.00 executed in favor of the Cuencas. Less than a month later, Marañon amended the complaint to implead Tayactac as a defendant.[4]

On February 11, 1998, Marañon posted SICI Bond No. 68427 JCL (4) No. 02370 in the amount of ₱1,000,000.00 issued by Stronghold Insurance. Two days later, the RTC issued the writ of preliminary attachment.[5] The sheriff served the writ, the summons and a copy of the complaint on the Cuencas on the same day. The service of the writ, summons and copy of the complaint were made on Tayactac on February 16, 1998.[6]

Enforcing the writ of preliminary attachment on February 16 and February 17, 1998, the sheriff levied upon the equipment, supplies, materials and various other personal property belonging to Arc Cuisine, Inc. that were found in the leased corporate office-cum-commissary or kitchen of the corporation.[7] On February 19, 1998, the sheriff submitted a report on his proceedings,[8] and filed an *ex parte* motion seeking the transfer of the levied properties to a safe place. The RTC granted the *ex parte* motion on February 23, 1998.[9]

On February 25, 1998, the Cuencas and Tayactac presented in the RTC a *Motion to Dismiss and to Quash Writ of Preliminary Attachment* on the grounds that: (1) the action involved intra-corporate matters that were within the original and exclusive jurisdiction of the Securities and Exchange Commission (SEC); and (2) there was another action pending in the SEC as well as a criminal complaint in the Office of the City Prosecutor of Parañaque City.[10]

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2 Id. at 205-210.
3 Id. at 49.
4 Id.
5 Id. at 50.
6 Id. at 51.
7 Id. at 366-367.
8 Id. at 51.
9 Id.
10 Id.

On March 5, 1998, Marañon opposed the motion.[11]

On August 10, 1998, the RTC denied the *Motion to Dismiss and to Quash Writ of Preliminary Attachment*, stating that the action, being one for the recovery of a sum of money and damages, was within its jurisdiction.[12]

Under date of September 3, 1998, the Cuencas and Tayactac moved for the reconsideration of the denial of their *Motion to Dismiss and to Quash Writ of Preliminary Attachment*, but the RTC denied their motion for reconsideration on September 16, 1998.

Thus, on October 14, 1998, the Cuencas and Tayactac went to the CA on *certiorari* and prohibition to challenge the August 10, 1998 and September 16, 1998 orders of the RTC on the basis of being issued with grave abuse of discretion amounting to lack or excess of jurisdiction (C.A.-G.R. SP No. 49288).[13]

On June 16, 1999, the CA promulgated its assailed decision in C.A.-G.R. SP No. 49288,[14] granting the petition. It annulled and set aside the challenged orders, and dismissed the amended complaint in Civil Case No. 98-023 for lack of jurisdiction, to wit:

> **WHEREFORE,** the Orders herein assailed are hereby **ANNULLED AND SET ASIDE**, and the judgment is hereby rendered **DISMISSING** the Amended Complaint in Civil Case No. 98-023 of the respondent court, for lack of jurisdiction.
>
> SO ORDERED.

On December 27, 1999, the CA remanded to the RTC for hearing and resolution of the Cuencas and Tayactac's claim for the damages sustained from the enforcement of the writ of preliminary attachment.[15]

On February 17, 2000,[16] the sheriff reported to the RTC, as follows:

> On the scheduled inventory of the properties (February 17, 2000) and to comply with the Resolution of the Court of Appeals dated

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11 Id. at 51-52.
12 Id. at 52.
13 Id.
14 Id. at 177-182; penned by Associate Justice Hector L. Hofileña (retired), and concurred in by Associate Justice Omar U. Amin (retired) and Associate Justice Presbitero J. Velasco, Jr. (now a Member of the Court).
15 Id. at 52.
16 Id. at 52-53.

> December 24, 1999 ordering the delivery of the attached properties to the defendants, the proceedings thereon being:
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> 1. With the assistance for (sic) the counsel of Cuencas, Atty. Pulumbarit, Atty. Ayo, defendant Marcelina Cuenca, and two Court Personnel, Robertson Catorce and Danilo Abanto, went to the warehouse where Mr. Marañon recommended for safekeeping the properties in which he personally assured its safety, at No. 14, Marian II Street, East Service Road, Parañaque Metro Manila.
>
> 2. That to our surprise, said warehouse is now tenanted by a new lessee and the properties were all gone and missing.
>
> 3. That there are informations (sic) that the properties are seen at Conti's Pastry & Bake Shop owned by Mr. Marañon, located at BF Homes in Parañaque City.

On April 6, 2000, the Cuencas and Tayactac filed a *Motion to Require Sheriff to Deliver Attached Properties and to Set Case for Hearing*,[17] praying that: (1) the Branch Sheriff be ordered to immediately deliver the attached properties to them; (2) Stronghold Insurance be directed to pay them the damages being sought in accordance with its undertaking under the surety bond for ₱1,000,0000.00; (3) Marañon be held personally liable to them considering the insufficiency of the amount of the surety bond; (4) they be paid the total of ₱1,721,557.20 as actual damages representing the value of the lost attached properties because they, being accountable for the properties, would be turning that amount over to Arc Cuisine, Inc.; and (5) Marañon be made to pay ₱200,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱100,000.00 as attorney's fees.

Stronghold Insurance filed its answer and opposition on April 13, 2000. In turn, the Cuencas and Tayactac filed their reply on May 5, 2000.

On May 25, 2000, Marañon filed his own comment/opposition to the *Motion to Require Sheriff to Deliver Attached Properties and to Set Case for Hearing* of the Cuencas and Tayactac, arguing that because the attached properties belonged to Arc Cuisine, Inc. 50% of the stockholding of which he and his relatives owned, it should follow that 50% of the value of the missing attached properties constituted liquidating dividends that should remain with and belong to him. Accordingly, he prayed that he should be required to return only ₱100,000.00 to the Cuencas and Tayactac.[18]

On June 5, 2000, the RTC commanded Marañon to surrender all the attached properties to the RTC through the sheriff within 10 days from

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17 Id. at 53-54.
18 Id. at 54.

notice; and directed the Cuencas and Tayactac to submit the affidavits of their witnesses in support of their claim for damages.[19]

On June 6, 2000, the Cuencas and Tayactac submitted their *Manifestation and Compliance*.[20]

Ruling of the RTC

After trial, the RTC rendered its judgment on April 28, 2003, holding Marañon and Stronghold Insurance jointly and solidarily liable for damages to the Cuencas and Tayactac,[21] *viz*:

> WHEREFORE, premises considered, as the defendants were able to preponderantly prove their entitlement for damages by reason of the unlawful and wrongful issuance of the writ of attachment, MANUEL D. MARAÑON, JR., plaintiff and defendant, Stronghold Insurance Company Inc., are found to be jointly and solidarily liable to pay the defendants the following amount to wit:
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> (1) PhP1,000,000.00 representing the amount of the bond;
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> (2) PhP 100,000.00 as moral damages;
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> (3) PhP 50,000.00 as exemplary damages;
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> (4) Php 100,000.00 as attorney's fees; and
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> (5) To pay the cost of suit.
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> SO ORDERED.

Ruling of the CA

Only Stronghold Insurance appealed to the CA (C.A.-G.R. CV No. 79145), assigning the following errors to the RTC, to wit:

> I.
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> THE LOWER COURT ERRED IN ORDERING SURETY-APPELLANT TO PAY THE AMOUNT OF ₱1,000,000.00 REPRESENTING THE AMOUNT OF THE BOND AND OTHER DAMAGES TO THE DEFENDANTS.
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> II.
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> THE LOWER COURT ERRED IN NOT TAKING INTO ACCOUNT THE INDEMNITY AGREEMENT (EXH. "2-SURETY") EXECUTED

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19 Id.
20 Id. at 54-55.
21 Id. at 210.

BY MANUEL D. MARAÑON, JR. IN FAVOR OF STRONGHOLD WHEREIN HE BOUND HIMSELF TO INDEMNIFY STRONGHOLD OF WHATEVER AMOUNT IT MAY BE HELD LIABLE ON ACCOUNT OF THE ISSUANCE OF THE ATTACHMENT BOND.[22]

On January 31, 2006, the CA, finding no reversible error, promulgated its decision affirming the judgment of the RTC.[23]

Stronghold Insurance moved for reconsideration, but the CA denied its motion for reconsideration on June 22, 2006.

Issues

Hence, this appeal by petition for review on *certiorari* by Stronghold Insurance, which submits that:

I.

THE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR AND DECIDED QUESTIONS OF SUBSTANCE IN A WAY NOT IN ACCORDANCE WITH LAW AND APPLICABLE DECISIONS OF THE HONORABLE COURT CONSIDERING THAT THE COURT OF APPEALS AFFIRMED THE ERRONEOUS DECISION OF THE TRIAL COURT HOLDING RESPONDENT MARA[Ñ]ON AND PETITIONER STRONGHOLD JOINTLY AND SOLIDARILY LIABLE TO PAY THE RESPONDENTS CUENCA, et al., FOR PURPORTED DAMAGES BY REASON OF THE ALLEGED UNLAWFUL AND WRONGFUL ISSUANCE OF THE WRIT OF ATTACHMENT, DESPITE THE FACT THAT:

A) RESPONDENT CUENCA et al., ARE NOT THE OWNERS OF THE PROPERTIES ATTACHED AND THUS, ARE NOT THE PROPER PARTIES TO CLAIM ANY PURPORTED DAMAGES ARISING THEREFROM.

B) THE PURPORTED DAMAGES BY REASON OF THE ALLEGED UNLAWFUL AND WRONGFUL ISSUANCE OF THE WRIT OF ATTACHMENT WERE CAUSED BY THE NEGLIGENCE OF THE BRANCH SHERIFF OF THE TRIAL COURT AND HIS FAILURE TO COMPLY WITH THE PROVISIONS OF THE RULES OF COURT PERTAINING TO THE ATTACHMENT OF PROPERTIES.

C) THE TRIAL COURT GRAVELY ERRED WHEN IT HELD PETITIONER STRONGHOLD TO BE SOLIDARILY LIABLE WITH RESPONDENT MARA[Ñ]ON TO RESPONDENTS CUENCA et al., FOR MORAL DAMAGES, EXEMPLARY DAMAGES, ATTORNEY'S FEES AND COST OF SUIT DESPITE THE FACT THAT THE GUARANTY OF

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22 Id. at 230.

23 Supra note 1.

PETITIONER STRONGHOLD PURSUANT TO ITS SURETY BOND IS LIMITED ONLY TO THE AMOUNT OF ₱1,000,000.00.

II

IN ANY EVENT, THE DECISION OF THE COURT APPEALS SHOULD HAVE HELD RESPONDENT MARA[Ñ]ON TO BE LIABLE TO INDEMNIFY PETITIONER STRONGHOLD FOR ALL PAYMENTS, DAMAGES, COSTS, LOSSES, PENALTIES, CHARGES AND EXPENSES IT SUSTAINED IN CONNECTION WITH THE INSTANT CASE, PURSUANT TO THE INDEMNITY AGREEMENT ENTERED INTO BY PETITIONER STRONGHOLD AND RESPONDENT MARA[Ñ]ON.[24]

On their part, the Cuencas and Tayactac counter:

A. Having actively participated in the trial and appellate proceedings of this case before the Regional Trial Court and the Court of Appeals, respectively, petitioner Stronghold is legally and effectively BARRED by ESTOPPEL from raising for the first time on appeal before this Honorable Court a defense and/or issue not raised below.[25]

B. Even assuming arguendo without admitting that the principle of estoppel is not applicable in this instant case, the assailed Decision and Resolution find firm basis in law considering that the writ of attachment issued and enforced against herein respondents has been declared ILLEGAL, NULL AND VOID for having been issued beyond the jurisdiction of the trial court.

C. There having been a factual and legal finding of the illegality of the issuance and consequently, the enforcement of the writ of attachment, Maranon and his surety Stronghold, consistent with the facts and the law, including the contract of suretyship they entered into, are JOINTLY AND SEVERALLY liable for the damages sustained by herein respondents by reason thereof.

D. Contrary to the allegations of Stronghold, its liability as surety under the attachment bond without which the writ of attachment shall not issue and be enforced against herein respondent if prescribed by law. In like manner, the obligations and liability on the attachment bond are also prescribed by law and not left to the discretion or will of the contracting parties to the prejudice of the persons against whom the writ was issued.

E. Contrary to the allegations of Stronghold, its liability for the damages sustained by herein respondents is both a statutory and contractual obligation and for which, it cannot escape accountability and liability in favor of the person against whom the illegal writ of attachment was issued and enforced. To allow Stronghold to delay, excuse or exempt itself from liability is unconstitutional, unlawful, and contrary to the basic tenets of equity and fair play.

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24 *Rollo*, pp. 23-24.
25 Id. at 388.

F. While the liability of Stronghold as surety indeed covers the principal amount of ₱1,000,000.00, nothing in the law and the contract between the parties limit or exempt Stronghold from liability for other damages. Including costs of suit and interest.[26]

In his own comment,[27] Marañon insisted that he could not be personally held liable under the attachment bond because the judgment of the RTC was rendered without jurisdiction over the subject matter of the action that involved an intra-corporate controversy among the stockholders of Arc Cuisine, Inc.; and that the jurisdiction properly pertained to the SEC, where another action was already pending between the parties.

Ruling

Although the question of whether the Cuencas and Tayactac could themselves recover damages arising from the wrongful attachment of the assets of Arc Cuisine, Inc. by claiming against the bond issued by Stronghold Insurance was not raised in the CA, we do not brush it aside because the actual legal interest of the parties in the subject of the litigation is a matter of substance that has jurisdictional impact, even on appeal before this Court.

The petition for review is meritorious.

There is no question that a litigation should be disallowed immediately if it involves a person without any interest at stake, for it would be futile and meaningless to still proceed and render a judgment where there is no actual controversy to be thereby determined. Courts of law in our judicial system are not allowed to delve on academic issues or to render advisory opinions. They only resolve actual controversies, for that is what they are authorized to do by the Fundamental Law itself, which forthrightly ordains that the judicial power is wielded only to settle actual controversies involving rights that are legally demandable and enforceable.[28]

To ensure the observance of the mandate of the Constitution, Section 2, Rule 3 of the *Rules of Court* requires that unless otherwise authorized by law or the *Rules of Court* every action must be prosecuted or defended in the name of the real party in interest.[29] Under the same rule, a real party in interest is one who stands to be benefited or injured by the judgment in the

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[26] Id. at 392-393.
[27] Id. at 353-356.
[28] Section 1, Article VIII, 1987 Constitution.
[29] Section 2. *Parties in interest*.— A real party in interest is the party who stands to be benefitted or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest. (2a)

suit, or one who is entitled to the avails of the suit. Accordingly, a person , to be a real party in interest in whose name an action must be prosecuted, should appear to be the present real owner of the right sought to be enforced, that is, his interest must be a present substantial interest, not a mere expectancy, or a future, contingent, subordinate, or consequential interest.[30] Where the plaintiff is not the real party in interest, the ground for the motion to dismiss is lack of cause of action.[31] The reason for this is that the courts ought not to pass upon questions not derived from any actual controversy. Truly, a person having no material interest to protect cannot invoke the jurisdiction of the court as the plaintiff in an action.[32] Nor does a court acquire jurisdiction over a case where the real party in interest is not present or impleaded.

The purposes of the requirement for the real party in interest prosecuting or defending an action at law are: (*a*) to prevent the prosecution of actions by persons without any right, title or interest in the case; (*b*) to require that the actual party entitled to legal relief be the one to prosecute the action; (*c*) to avoid a multiplicity of suits; and (*d*) to discourage litigation and keep it within certain bounds, pursuant to sound public policy.[33] Indeed, considering that all civil actions must be based on a cause of action,[34] defined as the act or omission by which a party *violates* the right of another,[35] the former as the defendant must be allowed to insist upon being opposed by the real party in interest so that he is protected from further suits regarding the same claim.[36] Under this rationale, the requirement benefits the defendant because "the defendant can insist upon a plaintiff who will afford him a setup providing good *res judicata* protection if the struggle is carried through on the merits to the end."[37]

The rule on real party in interest ensures, therefore, that the party with the legal right to sue brings the action, and this interest ends when a judgment involving the nominal plaintiff will protect the defendant from a subsequent identical action. Such a rule is intended to bring before the court the party rightfully interested in the litigation so that only real controversies will be presented and the judgment, when entered, will be binding and conclusive and the defendant will be saved from further harassment and vexation at the hands of other claimants to the same demand.[38]

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30 *Rayo vs. Metropolitan Bank and Trust Company*, G.R. No. 165142, December 10, 2007, 539 SCRA 571, 578-579; *Northeastern College Teachers and Employees Association vs. Northeastern College, Inc.*, G.R. No. 152923, January 19, 2009, 576 SCRA 149, 174.

31 *Sustiguer v. Tamayo*, G.R. No. 29341, Aug. 21, 1989, 176 SCRA 579, 588-589.

32 *Oco v. Limbaring*, G.R. No. 161298, January 31, 2006, 481 SCRA 348, 358.

33 *Ortiz v. San Miguel Corporation*, G.R. Nos. 151983-84, July 31, 2008, 560 SCRA 654, 672-673.

34 Section 1, Rule 2, *Rules of Court*.

35 Section 2, Rule 2, *Rules of Court*.

36 Friedenthal, Kane & Miller, *Civil Procedure*, West Group, Hornbook Series, 2nd Edition, §6.3, p. 321.

37 Id.

38 59 Am Jur 2nd, Parties, § 35.

But the real party in interest need not be the person who ultimately will benefit from the successful prosecution of the action. Hence, to aid itself in the proper identification of the real party in interest, the court should first ascertain the nature of the substantive right being asserted, and then must determine whether the party asserting that right is recognized as the real party in interest under the rules of procedure. Truly, that a party stands to gain from the litigation is not necessarily controlling.[39]

It is fundamental that the courts are established in order to afford reliefs to persons whose rights or property interests have been invaded or violated, or are threatened with invasion by others' conduct or acts, and to give relief only at the instance of such persons. The jurisdiction of a court of law or equity may not be invoked by or for an individual whose rights have not been breached.[40]

The remedial right or the remedial obligation is the person's interest in the controversy. The right of the plaintiff or other claimant is alleged to be violated by the defendant, who has the correlative obligation to respect the right of the former. Otherwise put, without the right, a person may not become a party plaintiff; without the obligation, a person may not be sued as a party defendant; without the violation, there may not be a suit. In such a situation, it is legally impossible for any person or entity to be both plaintiff and defendant in the same action, thereby ensuring that the controversy is actual and exists between adversary parties. Where there are no adversary parties before it, the court would be without jurisdiction to render a judgment.[41]

There is no dispute that the properties subject to the levy on attachment belonged to Arc Cuisine, Inc. alone, not to the Cuencas and Tayactac in their own right. They were only stockholders of Arc Cuisine, Inc., which had a personality distinct and separate from that of any or all of them.[42] The damages occasioned to the properties by the levy on attachment, wrongful or not, prejudiced Arc Cuisine, Inc., not them. As such, only Arc Cuisine, Inc. had the right under the substantive law to claim and recover such damages. This right could not also be asserted by the Cuencas and Tayactac unless they did so in the name of the corporation itself. But that did not happen herein, because Arc Cuisine, Inc. was not even joined in the action either as an original party or as an intervenor.

The Cuencas and Tayactac were clearly not vested with any direct interest in the personal properties coming under the levy on attachment by virtue alone of their being stockholders in Arc Cuisine, Inc. Their

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39 Friedenthal, Kane & Miller, *op. cit*., p. 320.
40 59 Am Jur 2d, Parties, § 30.
41 Id. § 6.
42 Section 2, *Corporation Code*; see *Traders Royal Bank v. Court of Appeals*, G.R. No. 78412, September 26, 1989, 177 SCRA 788, 792.

stockholdings represented only their proportionate or aliquot interest in the properties of the corporation, but did not vest in them any legal right or title to any specific properties of the corporation. Without doubt, Arc Cuisine, Inc. remained the owner as a distinct legal person.[43]

Given the separate and distinct legal personality of Arc Cuisine, Inc., the Cuencas and Tayactac lacked the legal personality to claim the damages sustained from the levy of the former's properties. According to *Asset Privatization Trust v. Court of Appeals*,[44] even when the foreclosure on the assets of the corporation was wrongful and done in bad faith the stockholders had no standing to recover for themselves moral damages; otherwise, they would be appropriating and distributing part of the corporation's assets prior to the dissolution of the corporation and the liquidation of its debts and liabilities. Moreover, in *Evangelista v. Santos*,[45] the Court, resolving whether or not the minority stockholders had the right to bring an action for damages against the principal officers of the corporation for their own benefit, said:

> As to the second question, the complaint shows that the action is for damages resulting from mismanagement of the affairs and assets of the corporation by its principal officer, it being alleged that defendant's maladministration has brought about the ruin of the corporation and the consequent loss of value of its stocks. **The injury complained of is thus primarily to the corporation, so that the suit for the damages claimed should be by the corporation rather than by the stockholders** (3 Fletcher, Cyclopedia of Corporation pp. 977-980). **The stockholders may not directly claim those damages for themselves** for that would result in the appropriation by, and the distribution among them of part of the corporate assets before the dissolution of the corporation and the liquidation of its debts and liabilities, something which cannot be legally done in view of section 16 of the Corporation Law, which provides:
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> > No shall corporation shall make or declare any stock or bond dividend or any dividend whatsoever except from the surplus profits arising from its business, or divide or distribute its capital stock or property other than actual profits among its members or stockholders until after the payment of its debts and the termination of its existence by limitation or lawful dissolution.
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> > x x x x
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> In the present case, **the plaintiff stockholders have brought the action not for the benefit of the corporation but for their own benefit,** since they ask that the defendant make good the losses occasioned by his mismanagement and pay to them the value of their respective participation in the corporate assets on the basis of their respective holdings. **Clearly,**

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[43] *Magsaysay-Labrador v. Court of Appeals*, G.R. No. 58168, December 19, 1989, 180 SCRA 266, 271-272.

[44] G.R. No. 121171, December 29, 1998, 300 SCRA 579, 617.

[45] 86 Phil. 387 (1950).

> **this cannot be done until all corporate debts, if there be any, are paid and the existence of the corporation terminated by the limitation of its charter or by lawful dissolution in view of the provisions of section 16 of the Corporation Law.** (Emphasis ours)
>
> It results that plaintiff's complaint shows no cause of action in their favor so that the lower court did not err in dismissing the complaint on that ground.
>
> While plaintiffs ask for remedy to which they are not entitled unless the requirement of section 16 of the Corporation Law be first complied with, we note that the action stated in their complaint is susceptible of being converted into a derivative suit for the benefit of the corporation by a mere change in the prayer. Such amendment, however, is not possible now, since the complaint has been filed in the wrong court, so that the same has to be dismissed.[46]

That Marañon knew that Arc Cuisine, Inc. owned the properties levied on attachment but he still excluded Arc Cuisine, Inc. from his complaint was of no consequence now. The Cuencas and Tayactac still had no right of action even if the affected properties were then under their custody at the time of the attachment, considering that their custody was only incidental to the operation of the corporation.

It is true, too, that the Cuencas and Tayactac could bring in behalf of Arc Cuisine, Inc. a proper action to recover damages resulting from the attachment. Such action would be one directly brought in the name of the corporation. Yet, that was not true here, for, instead, the Cuencas and Tayactac presented the claim in their own names.

In view of the outcome just reached, the Court deems it unnecessary to give any extensive consideration to the remaining issues.

WHEREFORE, the Court **GRANTS** the petition for review; and **REVERSES** and **SETS ASIDE** the decision of the Court of Appeals in CA-G.R. CV No. 79145 promulgated on January 31, 2006.

No pronouncements on costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

[46] Id. at 393-395.

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

MARIA LOURDES P. A. SERENO
Chief Justice