

DAVID LU, PETITIONER, VS. PATERNO LU YM, SR., PATERNO LU YM, JR., VICTOR LU YM, JOHN LU YM, KELLY LU YM, AND LUDO & LUYM DEVELOPMENT CORPORATION, RESPONDENTS.

G.R. No. 153690. February 15, 2011

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

By Decision of August 26, 2008, the Court[1] unanimously disposed of the three present petitions as follows:

WHEREFORE, premises considered, the petitions in G.R. Nos. 153690 and 157381 are DENIED for being moot and academic; while the petition in G.R. No. 170889 is DISMISSED for lack of merit. Consequently, the Status Quo Order dated January 23, 2006 is hereby LIFTED.

The Court of Appeals is DIRECTED to proceed with CA-G.R. CV No. 81163 and to resolve the same with dispatch.

SO ORDERED[.][2]

which Decision was, on motion for reconsideration, the Court voting 4-1,[3] reversed by Resolution of August 4, 2009, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the Motion for Reconsideration filed by John Lu Ym and Ludo & LuYm Development Corporation is GRANTED. The Decision of this Court dated August 26, 2008 is RECONSIDERED and SET ASIDE. The Complaint in SRC Case No. 021-CEB, now on appeal with the Court of Appeals in CA-G.R. CV No. 81163, is DISMISSED.

All interlocutory matters challenged in these consolidated petitions are DENIED for being moot and academic.

SO ORDERED.[4]

David Lu's Motion for Reconsideration and Motion to Refer Resolution to the Court En Banc was denied by minute Resolution of September 23, 2009.

Following his receipt on October 19, 2009 of the minute Resolution, David Lu personally filed on October 30, 2009 a Second Motion for Reconsideration and Motion to Refer Resolution to the Court En Banc. On even date, he filed through registered mail an "Amended Second Motion for Reconsideration and Motion to Refer Resolution to the Court En Banc." And on November 3, 2009, he filed a "Motion for Leave to File [a] Motion for Clarification[, and the] Second Motion for Reconsideration and Motion to Refer Resolution to the Court En Banc." He later also filed a "Supplement to Second Motion for Reconsideration with Motion to Dismiss" dated January 6, 2010.

John Lu Ym and Ludo & Luym Development Corporation (LLDC), meanwhile, filed with leave a Motion[5] for the Issuance of an Entry of Judgment of February 2, 2010, which merited an Opposition from David Lu.

In compliance with the Court's Resolution of January 11, 2010, Kelly Lu Ym, Victor Lu Ym and Paterno Lu Ym, Jr. filed a Comment/Opposition of March 20, 2010, while John Lu Ym and LLDC filed a Consolidated Comment of March 25, 2010, a Supplement thereto of April 20, 2010, and a Manifestation of May 24, 2010.

The present cases were later referred to the Court en banc by Resolution of October 20, 2010.

Brief Statement of the Antecedents

The three consolidated cases stemmed from the complaint for "Declaration of Nullity of Share Issue, Receivership and Dissolution" filed on August 14, 2000 before the Regional Trial Court (RTC) of Cebu City by David Lu, et al. against Paterno Lu Ym, Sr. and sons (Lu Ym father and sons) and LLDC.

By Decision of March 1, 2004, Branch 12 of the RTC ruled in favor of David et al. by annulling the issuance of the shares of stock subscribed and paid by Lu Ym father and sons at less than par value, and ordering the dissolution and asset liquidation of LLDC. The appeal of the trial court's Decision remains pending with the appellate court in CA-G.R. CV No. 81163.

Several incidents arising from the complaint reached the Court through the present three petitions.

In G.R. No. 153690 wherein David, et al. assailed the appellate court's resolutions dismissing their complaint for its incomplete signatory in the certificate of non-forum shopping and consequently annulling the placing of the subject corporation under receivership pendente lite, the Court, by Decision of August 26, 2008, found the issue to have been mooted by the admission by the trial court of David et al.'s Amended Complaint, filed by them pursuant to the trial court's order to conform to the requirements of the Interim Rules of Procedure Governing Intra-Corporate Controversies.

Since an amended pleading supersedes the pleading that it amends, the original complaint of David, et al. was deemed withdrawn from the records.

The Court noted in G.R. No. 153690 that both parties admitted the mootness of the issue and that the trial court had already rendered a decision on the merits of the case. It added that the Amended Complaint stands since Lu Ym father and sons availed of an improper mode (via an Urgent Motion filed with this Court) to assail the admission of the Amended Complaint.

In G.R. No. 157381 wherein Lu Ym father and sons challenged the appellate court's resolution restraining the trial court from proceeding with their motion to lift the receivership order which was filed during the pendency of G.R. No. 153690, the Court, by Decision of August 26, 2008 resolved that the issue was mooted by the amendment of the complaint and by the trial court's decision on the merits. The motion having been filed ancillary to the main action, which main action was already decided on the merits by the trial court, the Court held that there was nothing more to enjoin.

G.R. No. 170889 involved the denial by the appellate court of Lu Ym father and sons' application in CA-G.R. CV No. 81163 for a writ of preliminary injunction. By August 26, 2008 Decision, the Court dismissed the petition after finding no merit on their argument - which they raised for the first time in their motion for reconsideration before the appellate court - of lack of jurisdiction for non-payment of the correct RTC docket fees.

As reflected early on, the Court, in a turnaround, by Resolution of August 4, 2009, reconsidered its position on the matter of docket fees. It ruled that the trial court did not acquire jurisdiction over the case for David Lu, et al.'s failure to pay the correct docket fees, hence, all interlocutory matters and incidents subject of the present petitions must consequently be denied.

Taking Cognizance of the Present Incidents

The Internal Rules of the Supreme Court (IRSC) states that the Court en banc shall act on the following matters and cases:

- (a) cases in which the constitutionality or validity of any treaty, international or executive agreement, law, executive order, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question;
- (b) criminal cases in which the appealed decision imposes the death penalty or reclusion perpetua;
- (c) cases raising novel questions of law;
- (d) cases affecting ambassadors, other public ministers, and consuls;
- (e) cases involving decisions, resolutions, and orders of the Civil Service Commission, the Commission on Elections, and the Commission on Audit;
- (f) cases where the penalty recommended or imposed is the dismissal of a judge, the disbarment of a lawyer, the suspension of any of them for a period of more than one year, or a fine exceeding forty thousand pesos;
- (g) cases covered by the preceding paragraph and involving the reinstatement in the judiciary of a dismissed judge, the reinstatement of a lawyer in the roll of attorneys, or the lifting of a judge's suspension or a lawyer's suspension from the practice of law;
- (h) cases involving the discipline of a Member of the Court, or a Presiding Justice, or any Associate Justice of the collegial appellate court;
- (i) cases where a doctrine or principle laid down by the Court en banc or by a Division may be modified or reversed;
- (j) cases involving conflicting decisions of two or more divisions;
- (k) cases where three votes in a Division cannot be obtained;
- (l) Division cases where the subject matter has a huge financial impact on businesses or affects the welfare of a community;
- (m) Subject to Section 11 (b) of this rule, other division cases that, in the opinion of at least three Members of the Division who are voting and present, are appropriate for transfer to the Court en banc;
- (n) cases that the Court en banc deems of sufficient importance to merit its attention; and
- (o) all matters involving policy decisions in the administrative supervision of all courts and their personnel.[6]
(underscoring supplied)

The enumeration is an amalgamation of SC Circular No. 2-89 (February 7, 1989), as amended by En Banc Resolution of November 18, 1993, and the amplifications introduced by Resolution of January 18, 2000 in A.M. No. 99-12-08-SC with respect to administrative cases and matters.

The present cases fall under at least three types of cases for consideration by the Court En Banc. At least three members of the Court's Second Division (to which the present cases were transferred,[7] they being assigned to a Member thereof) found, by Resolution of October 20, 2010, that the cases were appropriate for referral-transfer to the Court En Banc which subsequently accepted[8] the referral in view of the sufficiently important reason to resolve all doubts on the validity of the challenged resolutions as they appear to modify or reverse doctrines or principles of law.

In *Firestone Ceramics v. Court of Appeals*,[9] the Court treated the consolidated cases as En Banc cases and set the therein petitioners' motion for oral argument, after finding that the cases were of sufficient importance to merit

the Court En Banc's attention. It ruled that the Court's action is a legitimate and valid exercise of its residual power.[10]

In *Limketkai Sons Milling, Inc. v. Court of Appeals*, the Court conceded that it is not infallible. Should any error of judgment be perceived, it does not blindly adhere to such error, and the parties adversely affected thereby are not precluded from seeking relief therefrom, by way of a motion for reconsideration. In this jurisdiction, rectification of an error, more than anything else, is of paramount importance.

x x x x

It bears stressing that where, as in the present case, the Court En Banc entertains a case for its resolution and disposition, it does so without implying that the Division of origin is incapable of rendering objective and fair justice. The action of the Court simply means that the nature of the cases calls for en banc attention and consideration. Neither can it be concluded that the Court has taken undue advantage of sheer voting strength. It was merely guided by the well-studied finding and sustainable opinion of the majority of its actual membership- that, indeed, subject cases are of sufficient importance meriting the action and decision of the whole Court. It is, of course, beyond cavil that all the members of this highest Court of the land are always imbued with the noblest of intentions in interpreting and applying the germane provisions of law, jurisprudence, rules and Resolutions of the Court- to the end that public interest be duly safeguarded and rule of law be observed.[11]

It is argued that the assailed Resolutions in the present cases have already become final,[12] since a second motion for reconsideration is prohibited except for extraordinarily persuasive reasons and only upon express leave first obtained;[13] and that once a judgment attains finality, it thereby becomes immutable and unalterable, however unjust the result of error may appear.

The contention, however, misses an important point. The doctrine of immutability of decisions applies only to final and executory decisions. Since the present cases may involve a modification or reversal of a Court-ordained doctrine or principle, the judgment rendered by the Special Third Division may be considered unconstitutional, hence, it can never become final. It finds mooring in the deliberations of the framers of the Constitution:

On proposed Section 3(4), Commissioner Natividad asked what the effect would be of a decision that violates the proviso that "no doctrine or principle of law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court en banc." The answer given was that such a decision would be invalid. Following up, Father Bernas asked whether the decision, if not challenged, could become final and binding at least on the parties. Romulo answered that, since such a decision would be in excess of jurisdiction, the decision on the case could be reopened anytime.[14] (emphasis and underscoring supplied)

A decision rendered by a Division of this Court in violation of this constitutional provision would be in excess of jurisdiction and, therefore, invalid.[15] Any entry of judgment may thus be said to be "inefficacious"[16] since the decision is void for being unconstitutional.

While it is true that the Court en banc exercises no appellate jurisdiction over its Divisions, Justice Minerva Gonzaga-Reyes opined in *Firestone* and concededly recognized that "[t]he only constraint is that any doctrine or principle of law laid down by the Court, either rendered en banc or in division, may be overturned or reversed only by the Court sitting en banc." [17]

That a judgment must become final at some definite point at the risk of occasional error cannot be appreciated in a case that embroils not only a general allegation of "occasional error" but also a serious accusation of a violation of the Constitution, viz., that doctrines or principles of law were modified or reversed by the Court's Special Third Division August 4, 2009 Resolution.

The law allows a determination at first impression that a doctrine or principle laid down by the court en banc or in division may be modified or reversed in a case which would warrant a referral to the Court En Banc. The use of the word "may" instead of "shall" connotes probability, not certainty, of modification or reversal of a doctrine, as may be deemed by the Court. Ultimately, it is the entire Court which shall decide on the acceptance of the referral and, if so, "to reconcile any seeming conflict, to reverse or modify an earlier decision, and to declare the Court's doctrine." [18]

The Court has the power and prerogative to suspend its own rules and to exempt a case from their operation if and when justice requires it, [19] as in the present circumstance where movant filed a motion for leave after the prompt submission of a second motion for reconsideration but, nonetheless, still within 15 days from receipt of the last assailed resolution.

Well-entrenched doctrines or principles of law that went astray need to be steered back to their proper course. Specifically, as David Lu correctly points out, it is necessary to reconcile and declare the legal doctrines regarding actions that are incapable of pecuniary estimation, application of estoppel by laches in raising an objection of lack of jurisdiction, and whether bad faith can be deduced from the erroneous annotation of *lis pendens*.

Upon a considered, thorough reexamination, the Court grants David Lu's Motion for Reconsideration. The assailed Resolutions of August 4, 2009 and September 23, 2009, which turn turtle settled doctrines, must be overturned. The Court thus reinstates the August 26, 2008 Decision wherein a three-tiered approach was utilized to analyze the issue on docket fees:

In the instant case, however, we cannot grant the dismissal prayed for because of the following reasons: First, the case instituted before the RTC is one incapable of pecuniary estimation. Hence, the correct docket fees were paid. Second, John and LLDC are estopped from questioning the jurisdiction of the trial court because of their active participation in the proceedings below, and because the issue of payment of insufficient docket fees had been belatedly raised before the Court of Appeals, i.e., only in their motion for reconsideration. Lastly, assuming that the docket fees paid were truly inadequate, the mistake was committed by the Clerk of Court who assessed the same and not imputable to David; and as to the deficiency, if any, the same may instead be considered a lien on the judgment that may thereafter be rendered. [20] (*italics in the original; emphasis and underscoring supplied*)

The Value of the Subject Matter Cannot be Estimated

On the claim that the complaint had for its objective the nullification of the issuance of 600,000 shares of stock of LLDC, the real value of which based on underlying real estate values, as alleged in the complaint, stands at P1,087,055,105, the Court's assailed August 4, 2009 Resolution found:

Upon deeper reflection, we find that the movants' [Lu Ym father & sons] claim has merit. The 600,000 shares of stock were, indeed, properties in litigation. They were the subject matter of the complaint, and the relief prayed for entailed the nullification of the transfer thereof and their return to LLDC. David, et al., are minority shareholders of the corporation who claim to have been prejudiced by the sale of the shares of stock to the Lu Ym father and sons. Thus, to the extent of the damage or injury they allegedly have suffered from this sale of the shares of stock, the action they filed can be characterized as one capable of pecuniary estimation. The shares of stock have a definite value, which was declared by plaintiffs [David Lu, et al.] themselves in their complaint. Accordingly, the docket fees should have been computed based on this amount. This is clear from the following version of Rule 141, Section 7, which was in effect at the time the complaint was filed. [21] (*emphasis and underscoring supplied*)

The said Resolution added that the value of the 600,000 shares of stock, which are the properties in litigation, should be the basis for the computation of the filing fees. It bears noting, however, that David, et al. are not

claiming to own these shares. They do not claim to be the owners thereof entitled to be the transferees of the shares of stock. The mention of the real value of the shares of stock, over which David, et al. do not, it bears emphasis, interpose a claim of right to recovery, is merely narrative or descriptive in order to emphasize the inequitable price at which the transfer was effected.

The assailed August 4, 2009 Resolution also stated that "to the extent of the damage or injury [David, et al.] allegedly have suffered from this sale," the action "can be characterized as one capable of pecuniary estimation." The Resolution does not, however, explore the value of the extent of the damage or injury. Could it be the pro rata decrease (e.g., from 20% to 15%) of the percentage shareholding of David, et al. vis-à-vis to the whole?

Whatever property, real or personal, that would be distributed to the stockholders would be a mere consequence of the main action. In the end, in the event LLDC is dissolved, David, et al. would not be getting the value of the 600,000 shares, but only the value of their minority number of shares, which are theirs to begin with.

The complaint filed by David, et al. is one for declaration of nullity of share issuance. The main relief prayed for both in the original complaint and the amended complaint is the same, that is, to declare null and void the issuance of 600,000 unsubscribed and unissued shares to Lu Ym father and sons, et al. for a price of 1/18 of their real value, for being inequitable, having been done in breach of director's fiduciary's duty to stockholders, in violation of the minority stockholders' rights, and with unjust enrichment.

As judiciously discussed in the Court's August 26, 2008 Decision, the test in determining whether the subject matter of an action is incapable of pecuniary estimation is by ascertaining the nature of the principal action or remedy sought. It explained:

x x x To be sure, the annulment of the shares, the dissolution of the corporation and the appointment of receivers/management committee are actions which do not consist in the recovery of a sum of money. If, in the end, a sum of money or real property would be recovered, it would simply be the consequence of such principal action. Therefore, the case before the RTC was incapable of pecuniary estimation.[22](italics in the original, emphasis and underscoring supplied)

Actions which the Court has recognized as being incapable of pecuniary estimation include legality of conveyances. In a case involving annulment of contract, the Court found it to be one which cannot be estimated:

Petitioners argue that an action for annulment or rescission of a contract of sale of real property is a real action and, therefore, the amount of the docket fees to be paid by private respondent should be based either on the assessed value of the property, subject matter of the action, or its estimated value as alleged in the complaint, pursuant to the last paragraph of §7(b) of Rule 141, as amended by the Resolution of the Court dated September 12, 1990. Since private respondents alleged that the land, in which they claimed an interest as heirs, had been sold for P4,378,000.00 to petitioners, this amount should be considered the estimated value of the land for the purpose of determining the docket fees.

On the other hand, private respondents counter that an action for annulment or rescission of a contract of sale of real property is incapable of pecuniary estimation and, so, the docket fees should be the fixed amount of P400.00 in Rule 141, §7(b)(1). In support of their argument, they cite the cases of *Lapitan v. Scandia, Inc.* and *Bautista v. Lim*. In *Lapitan* this Court, in an opinion by Justice J.B.L. Reyes, held:

A review of the jurisprudence of this Court indicates that in determining whether an action is one the subject matter of which is not capable of pecuniary estimation, this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the courts of first instance would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, or where the money claim is purely incidental to, or

a consequence of, the principal relief sought, like in suits to have the defendant perform his part of the contract (specific performance) and in actions for support, or for annulment of a judgment or to foreclose a mortgage, this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by courts of first instance. The rationale of the rule is plainly that the second class cases, besides the determination of damages, demand an inquiry into other factors which the law has deemed to be more within the competence of courts of first instance, which were the lowest courts of record at the time that the first organic laws of the Judiciary were enacted allocating jurisdiction (Act 136 of the Philippine Commission of June 11, 1901).

Actions for specific performance of contracts have been expressly pronounced to be exclusively cognizable by courts of first instance: *De Jesus vs. Judge Garcia*, L-26816, February 28, 1967; *Manufacturer's Distributors, Inc. vs. Yu Siu Liong*, L-21285, April 29, 1966. And no cogent reason appears, and none is here advanced by the parties, why an action for rescission (or resolution) should be differently treated, a "rescission" being a counterpart, so to speak, of "specific performance". In both cases, the court would certainly have to undertake an investigation into facts that would justify one act or the other. No award for damages may be had in an action for rescission without first conducting an inquiry into matters which would justify the setting aside of a contract, in the same manner that courts of first instance would have to make findings of fact and law in actions not capable of pecuniary estimation expressly held to be so by this Court, arising from issues like those raised in *Arroz v. Alojado, et al.*, L-22153, March 31, 1967 (the legality or illegality of the conveyance sought for and the determination of the validity of the money deposit made); *De Ursua v. Pelayo*, L-13285, April 18, 1950 (validity of a judgment); *Bunayog v. Tunas*, L-12707, December 23, 1959 (validity of a mortgage); *Baito v. Sarmiento*, L-13105, August 25, 1960 (the relations of the parties, the right to support created by the relation, etc., in actions for support), *De Rivera, et al. v. Halili*, L-15159, September 30, 1963 (the validity or nullity of documents upon which claims are predicated). Issues of the same nature may be raised by a party against whom an action for rescission has been brought, or by the plaintiff himself. It is, therefore, difficult to see why a prayer for damages in an action for rescission should be taken as the basis for concluding such action as one capable of pecuniary estimation -- a prayer which must be included in the main action if plaintiff is to be compensated for what he may have suffered as a result of the breach committed by defendant, and not later on precluded from recovering damages by the rule against splitting a cause of action and discouraging multiplicity of suits.[23] (emphasis and underscoring supplied)

IN FINE, the Court holds that David Lu, et al.'s complaint is one incapable of pecuniary estimation, hence, the correct docket fees were paid. The Court thus proceeds to tackle the arguments on estoppel and lien, mindful that the succeeding discussions rest merely on a contrary assumption, viz., that there was deficient payment.

Estoppel Has Set In

Assuming *arguendo* that the docket fees were insufficiently paid, the doctrine of estoppel already applies.

The assailed August 4, 2009 Resolution cited *Vargas v. Caminas*[24] on the non-applicability of the *Tijam* doctrine where the issue of jurisdiction was, in fact, raised before the trial court rendered its decision. Thus the Resolution explained:

Next, the Lu Ym father and sons filed a motion for the lifting of the receivership order, which the trial court had issued in the interim. David, et al., brought the matter up to the CA even before the trial court could resolve the motion. Thereafter, David, et al., filed their Motion to Admit Complaint to Conform to the Interim Rules Governing Intra-Corporate Controversies. It was at this point that the Lu Ym father and sons raised the question of the amount of filing fees paid. They also raised this point again in the CA when they appealed the trial court's decision in the case below.

We find that, in the circumstances, the Lu Ym father and sons are not estopped from challenging the jurisdiction of the trial court. They raised the insufficiency of the docket fees before the trial court rendered

judgment and continuously maintained their position even on appeal to the CA. Although the manner of challenge was erroneous - they should have addressed this issue directly to the trial court instead of the OCA - they should not be deemed to have waived their right to assail the jurisdiction of the trial court.[25] (emphasis and underscoring supplied)

Lu Ym father and sons did not raise the issue before the trial court. The narration of facts in the Court's original decision shows that Lu Ym father and sons merely inquired from the Clerk of Court on the amount of paid docket fees on January 23, 2004. They thereafter still "speculat[ed] on the fortune of litigation." [26] Thirty-seven days later or on March 1, 2004 the trial court rendered its decision adverse to them.

Meanwhile, Lu Ym father and sons attempted to verify the matter of docket fees from the Office of the Court Administrator (OCA). In their Application for the issuance a writ of preliminary injunction filed with the Court of Appeals, they still failed to question the amount of docket fees paid by David Lu, et al. It was only in their Motion for Reconsideration of the denial by the appellate court of their application for injunctive writ that they raised such issue.

Lu Ym father and sons' further inquiry from the OCA cannot redeem them. A mere inquiry from an improper office at that, could not, by any stretch, be considered as an act of having raised the jurisdictional question prior to the rendition of the trial court's decision. In one case, it was held:

Here it is beyond dispute that respondents paid the full amount of docket fees as assessed by the Clerk of Court of the Regional Trial Court of Malolos, Bulacan, Branch 17, where they filed the complaint. If petitioners believed that the assessment was incorrect, they should have questioned it before the trial court. Instead, petitioners belatedly question the alleged underpayment of docket fees through this petition, attempting to support their position with the opinion and certification of the Clerk of Court of another judicial region. Needless to state, such certification has no bearing on the instant case.[27] (italics in the original; emphasis and underscoring in the original)

The inequity resulting from the abrogation of the whole proceedings at this late stage when the decision subsequently rendered was adverse to the father and sons is precisely the evil being avoided by the equitable principle of estoppel.

No Intent to Defraud the Government

Assuming arguendo that the docket fees paid were insufficient, there is no proof of bad faith to warrant a dismissal of the complaint, hence, the following doctrine applies:

x x x In *Sun Insurance Office, Ltd., (SIOL) v. Asuncion*, this Court ruled that the filing of the complaint or appropriate initiatory pleading and the payment of the prescribed docket fee vest a trial court with jurisdiction over the subject matter or nature of the action. If the amount of docket fees paid is insufficient considering the amount of the claim, the clerk of court of the lower court involved or his duly authorized deputy has the responsibility of making a deficiency assessment. The party filing the case will be required to pay the deficiency, but jurisdiction is not automatically lost.[28] (underscoring supplied)

The assailed Resolution of August 4, 2009 held, however, that the above-quoted doctrine does not apply since there was intent to defraud the government, citing one attendant circumstance- the annotation of notices of lis pendens on real properties owned by LLDC. It deduced:

From the foregoing, it is clear that a notice of lis pendens is availed of mainly in real actions. Hence, when David, et al., sought the annotation of notices of lis pendens on the titles of LLDC, they acknowledged that the complaint they had filed affected a title to or a right to possession of real properties. At the very least, they must have been fully aware that the docket fees would be based on the value of the realties involved. Their

silence or inaction to point this out to the Clerk of Court who computed their docket fees, therefore, becomes highly suspect, and thus, sufficient for this Court to conclude that they have crossed beyond the threshold of good faith and into the area of fraud. Clearly, there was an effort to defraud the government in avoiding to pay the correct docket fees. Consequently, the trial court did not acquire jurisdiction over the case.[29]

All findings of fraud should begin the exposition with the presumption of good faith. The inquiry is not whether there was good faith on the part of David, et al., but whether there was bad faith on their part.

The erroneous annotation of a notice of lis pendens does not negate good faith. The overzealousness of a party in protecting pendente lite his perceived interest, inchoate or otherwise, in the corporation's properties from depletion or dissipation, should not be lightly equated to bad faith.

That notices of lis pendens were erroneously annotated on the titles does not have the effect of changing the nature of the action. The aggrieved party is not left without a remedy, for they can move to cancel the annotations. The assailed August 4, 2009 Resolution, however, deemed such act as an acknowledgement that the case they filed was a real action, concerning as it indirectly does the corporate realties, the titles of which were allegedly annotated. This conclusion does not help much in ascertaining the filing fees because the value of these real properties and the value of the 600,000 shares of stock are different.

Further, good faith can be gathered from the series of amendments on the provisions on filing fees, that the Court was even prompted to make a clarification.

When David Lu, et al. filed the Complaint on August 14, 2000 or five days after the effectivity of the Securities Regulation Code or Republic Act No. 8799,[30] the then Section 7 of Rule 141 was the applicable provision, without any restricted reference to paragraphs (a) and (b) 1 & 3 or paragraph (a) alone. Said section then provided:

SEC. 7. Clerks of Regional Trial Courts. -

(a) For filing an action or a permissive counterclaim or money claim against an estate not based on judgment, or for filing with leave of court a third-party, fourth-party, etc. complaint, or a complaint in intervention, and for all clerical services in the same, if the total sum claimed, exclusive of interest, or the stated value of the property in litigation, is:

x x x x

(b) For filing:

1. Actions where the value of the subject matter cannot be estimated x x x

2. Special civil actions except judicial foreclosure of mortgage which shall be governed by paragraph (a) above x x x

3. All other actions not involving property x x x

In a real action, the assessed value of the property, or if there is none, the estimated value thereof shall be alleged by the claimant and shall be the basis in computing the fees.

x x x x[31] (emphasis supplied)

The Court, by Resolution of September 4, 2001 in A. M. No. 00-8-10-SC,[32] clarified the matter of legal fees to be collected in cases formerly cognizable by the Securities and Exchange Commission following their transfer to the RTC.

Clarification has been sought on the legal fees to be collected and the period of appeal applicable in cases

formerly cognizable by the Securities and Exchange Commission. It appears that the Interim Rules of Procedure on Corporate Rehabilitation and the Interim Rules of Procedure for Intra-Corporate Controversies do not provide the basis for the assessment of filing fees and the period of appeal in cases transferred from the Securities and Exchange Commission to particular Regional Trial Courts.

The nature of the above mentioned cases should first be ascertained. Section 3(a), Rule 1 of the 1997 Rules of Civil Procedure defines civil action as one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong. It further states that a civil action may either be ordinary or special, both being governed by the rules for ordinary civil actions subject to the special rules prescribed for special civil actions. Section 3(c) of the same Rule, defines a special proceeding as a remedy by which a party seeks to establish a status, a right, or a particular fact.

Applying these definitions, the cases covered by the Interim Rules for Intra-Corporate Controversies should be considered as ordinary civil actions. These cases either seek the recovery of damages/property or specific performance of an act against a party for the violation or protection of a right. These cases are:

- (1) Devices or schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association;
- (2) Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members or associates; and between, any or all of them and the corporation, partnership, or association of which they are stockholders, members or associates, respectively;
- (3) Controversies in the election or appointment of directors, trustees, officers, or managers of corporations, partnerships, or associations;
- (4) Derivative suits; and
- (5) Inspection of corporate books.

On the other hand, a petition for rehabilitation, the procedure for which is provided in the Interim Rules of Procedure on Corporate Recovery, should be considered as a special proceeding. It is one that seeks to establish the status of a party or a particular fact. As provided in section 1, Rule 4 of the Interim Rules on Corporate Recovery, the status or fact sought to be established is the inability of the corporate debtor to pay its debts when they fall due so that a rehabilitation plan, containing the formula for the successful recovery of the corporation, may be approved in the end. It does not seek a relief from an injury caused by another party.

Section 7 of Rule 141 (Legal Fees) of the Revised Rules of Court lays the amount of filing fees to be assessed for actions or proceedings filed with the Regional Trial Court. Section 7(a) and (b) apply to ordinary civil actions while 7(d) and (g) apply to special proceedings.

In fine, the basis for computing the filing fees in intra-corporate cases shall be section 7(a) and (b) 1 & 3 of Rule 141. For petitions for rehabilitation, section 7(d) shall be applied. (emphasis and underscoring supplied)

The new Section 21(k) of Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC[33] (July 20, 2004), expressly provides that "[f]or petitions for insolvency or other cases involving intra-corporate controversies, the fees prescribed under Section 7(a) shall apply." Notatu dignum is that paragraph (b) 1 & 3 of Section 7 thereof was omitted from the reference. Said paragraph[34] refers to docket fees for filing "[a]ctions where the value of the subject matter cannot be estimated" and "all other actions not involving property."

By referring the computation of such docket fees to paragraph (a) only, it denotes that an intra-corporate controversy always involves a property in litigation, the value of which is always the basis for computing the

applicable filing fees. The latest amendments seem to imply that there can be no case of intra-corporate controversy where the value of the subject matter cannot be estimated. Even one for a mere inspection of corporate books.

If the complaint were filed today, one could safely find refuge in the express phraseology of Section 21 (k) of Rule 141 that paragraph (a) alone applies.

In the present case, however, the original Complaint was filed on August 14, 2000 during which time Section 7, without qualification, was the applicable provision. Even the Amended Complaint was filed on March 31, 2003 during which time the applicable rule expressed that paragraphs (a) and (b) 1 & 3 shall be the basis for computing the filing fees in intra-corporate cases, recognizing that there could be an intra-corporate controversy where the value of the subject matter cannot be estimated, such as an action for inspection of corporate books. The immediate illustration shows that no mistake can even be attributed to the RTC clerk of court in the assessment of the docket fees.

Finally, assuming there was deficiency in paying the docket fees and assuming further that there was a mistake in computation, the deficiency may be considered a lien on the judgment that may be rendered, there being no established intent to defraud the government.

WHEREFORE, the assailed Resolutions of August 4, 2009 and September 23, 2009 are REVERSED and SET ASIDE. The Court's Decision of August 26, 2008 is REINSTATED.

The Court of Appeals is DIRECTED to resume the proceedings and resolve the remaining issues with utmost dispatch in CA-G.R. CV No. 81163.

SO ORDERED.

Carpio, Velasco, Jr., Brion, Abad, Villarama, Jr., Perez, Mendoza, and Sereno, JJ., concur.

Nachura, J., please see dissenting opinion.

Corona, C.J., and Leonardo-De Castro, JJ., join the dissent of J. Nachura

Peralta, J., see concurring opinion.

Bersamin, J., with concurring opinion.

Del Castillo, J., no part.

[1] Third Division: Ynares-Santiago (chairperson), Carpio Morales (additional member), Chico-Nazario, Nachura (ponente), and Reyes, JJ.

[2] *Lu v. Lu Ym, Sr.*, G.R. No. 153690, August 26, 2008, 563 SCRA 254, 280-281.

[3] Special Third Division: Ynares-Santiago (chairperson), Carpio Morales (dissenting), Chico-Nazario, Velasco, Jr. (additional member), Nachura (ponente), JJ.

[4] *Lu v. Lu Ym, Sr.*, G.R. No. 153690, August 4, 2009, 595 SCRA 79, 95.

[5] With Supplement of February 25, 2010.

[6] A.M. No. 10-4-20-SC (May 4, 2010), Rule 2, Sec. 3.

[7] Internal Resolution of June 15, 2010.

[8] IRSC, Rule 2, Sec. 11(b).

[9] G.R. No. 127022, June 28, 2000, 334 SCRA 465.

[10] *Id.* at 473.

[11] *Id.* at 473-474; vide *People v. Ebio*, G.R. No. 147750, September 29, 2004, 439 SCRA 421, where the Court, on motion for reconsideration raising a question of quorum, recalled a Decision rendered en banc and resubmitted the case to the Court en banc for re-deliberation.

[12] Unlike *Firestone* which involved a timely motion for reconsideration. Likewise differentiated from *Firestone* is the *Sumilao* case, *Fortich v. Corona* (G.R. No. 131457). In the latter case, however, before the "matter" of the motion for reconsideration was brought to the Banc en consulta, it had already been voted upon by the Second Division with a vote of 2-2, a stalemate constituting a denial of the motion.

[13] *Rollo* (G.R. No. 170889), pp. 1481 & 1507 et seq., citing *Ortigas and Company Limited Partnership v. Velasco*, G.R. No. 109645, March 4, 1996, 254 SCRA 234, as reiterated in *Systra Philipppines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007, 533 SCRA 776.

[14] *Bernas, The Intent of the 1986 Constitution Writers*, (1995), p. 517.

[15] *Group Commander, Intelligence and Security Group, Philippine Army v. Dr. Malvar*, 438 Phil. 252, 279 (2002).

[16] *Manila Electric Company v. Barlis*, G.R. No. 114231, June 29, 2004, 433 SCRA 11, 29 where a third motion for reconsideration was acted upon favorably after recalling the entry of judgment. Vide also *Tan Tiac Ching v. Cosico*, A.M. No. CA-02-33, July 31, 2002, 385 SCRA 509, 517, stating that "[t]he recall of entries of judgments, albeit rare, is not novelty," citing *Muñoz v. Court of Appeals* (G.R. No. 125451, January 20, 2000, 322 SCRA 741). For instances when the Court relaxed the rule on finality of judgments, vide *Barnes v. Padilla*, G.R. No. 160753, September 30, 2004, 439 SCRA 675, 686-687.

[17] *Firestone Ceramics v. Court of Appeals*, *supra* at 478.

[18] *Vir-jen Shipping and Marine Services, Inc. v. NLRC*, Nos. L-58011-12, November 18, 1983, 125 SCRA 577, 585.

[19] *Destileria Limtuaco & Co, Inc. v. IAC*, No. L-74369, January 29, 1988, 157 SCRA 706.

[20] *Supra* note 2 at 274.

[21] *Supra* note 4 at 88-89.

[22] *Supra* note 2 at 275-276.

[23] *De Leon v. CA*, 350 Phil. 535, 540-542 (1998).

[24] G.R. Nos. 137869 & 137940, June 12, 2008, 554 SCRA 303.

[25] *Supra* note 4 at 94.

[26] *Supra* note 2 at 277.

[27] *Rivera v. del Rosario*, 464 Phil. 783, 797 (2004).

[28] *Ibid.*

[29] *Supra* note 4 at 92.

[30] The statute was issued on July 19, 2000 and took effect on August 9, 2000, pursuant to its Sec. 78; vide *International Broadcasting Corporation v. Jalandoon*, G.R. No. 148152, November 18, 2005, 475 SCRA 446.

[31] Vide A.M. No. 00-2-01-SC (March 1, 2000).

[32] Effective October 1, 2001.

[33] The amendments took effect on August 16, 2004.

[34] Sub-paragraphs (1) and (3) remain unchanged except for the increase in the amounts of fees.

DISSENTING OPINION

NACHURA, J.:

For resolution are the following motions filed by David Lu against respondents Paterno Lu Ym, Sr., Paterno Lu Ym, Jr., Victor Lu Ym, John Lu Ym, Kelly Lu Ym, and Ludo and LuYm Development Corporation (LLDC): 1) Second Motion for Reconsideration and Motion to Refer Resolution to the Court En Banc;[1] 2) Amended Second Motion for Reconsideration and Motion to Refer Resolution to the Court En Banc;[2] 3) Motion for Leave to File Motion for Clarification, Amended Second Motion for Reconsideration and Motion to Refer Resolution to the Court En Banc;[3] 4) Motion for Clarification;[4] and 5) Supplement to the Second Motion for Reconsideration with Motion to Dismiss.[5]

Also before this Court are six motions filed by respondents John Lu Ym and LLDC, namely: 1) Motion for Leave to File and Admit Motion for the Issuance of an Entry of Judgment;[6] 2) Motion for the Issuance of an Entry of Judgment;[7] 3) Motion for Leave to File and Admit Supplement to Motion for the Issuance of an Entry of Judgment;[8] 4) Supplement to Motion for the Issuance of an Entry of Judgment;[9] 5) Motion for Leave to File and Admit Attached Manifestation;[10] and 6) Manifestation.[11]

The relevant factual and procedural antecedents that gave rise to the parties' respective motions are as follows:

On August 26, 2008, this Court denied the petitions in G.R. Nos. 153690 and 157381 for being moot and academic; dismissed the petition of John Lu Ym and LLDC in G.R. No. 170889; and consequently lifted the status quo order dated January 23, 2006. The Court further directed the Court of Appeals (CA) to proceed with CA-G.R. CV No. 81163 and to resolve the same with dispatch.[12]

On more thorough reflection, in a Resolution[13] dated August 4, 2009, we granted John Lu Ym and LLDC's motion for reconsideration, and set aside our August 26, 2008 Decision. Consequently, we dismissed the complaint in SRC Case No. 021-CEB then on appeal with the CA in CA-G.R. CV No. 81163. Moreover, we denied all interlocutory matters challenged in the consolidated petitions for being moot and academic.[14]

Aggrieved, David Lu filed a Motion for Reconsideration and Motion to Refer Resolution to the Court En Banc.[15] In a Resolution[16] dated September 23, 2009, we denied the motion with finality for lack of merit.

Undaunted, David Lu successively filed the above-mentioned motions now submitted for resolution. In a Resolution dated October 20, 2010, the Court's Second Division voted to submit the pending incidents to the Court En Banc, and the latter accepted the referral.

In support of his motions, David Lu advances the following arguments:

23.1. First, by changing the determinative test as to when an action is or is not capable of pecuniary interest, the August 4 Resolution will effectively result in practically all actions being capable of pecuniary interest. By

deviating from the well-established rule that it is only when the principal remedy is for recovery of property that an action becomes capable of pecuniary interest; and by holding that the Complaint is capable of pecuniary estimation simply because [a] it involves property the value of which was described by Respondent Lu; [b] Respondent Lu alleged that he has suffered damage or injury from which his cause of action arose, the Resolution purports to make practically all cases capable of pecuniary estimation because [a] all actions would necessarily involve an allegation of damage or injury because that allegation is an indispensable element of a cause of action; and [b] numerous cases involve property with specific values even if actual recovery of that property is not sought.

23.2. Second, the August 4 Resolution, by concluding that Lu Ym [f]ather and sons is not estopped from assailing the trial court's jurisdiction despite them having raised that issue for the first time on appeal and only after an adverse decision has been rendered, will effectively allow unscrupulous litigants to "gamble on the results of litigation" and to wait until the proceedings are at an advanced stage and for an adverse decision to be rendered before assailing the trial court's jurisdiction. The August 4 Resolution thus effectively condones the wastage of the limited time and resources of the courts and of the other litigants as well.

23.3. Third, the August 4 Resolution, by making a finding of bad faith from the innocuous act of annotating notices of lis pendens, effectively puts the public at risk of being held to have acted in bad faith for acts done innocently but perhaps erroneously. This effect becomes even worse when doubtful or disputed questions of law involved - since the effect of the August 4 Resolution is that mere error in judgment amounts to bad faith.[17]

Looking into the merits of David Lu's arguments, his motions are doomed to fail.

David Lu insists that our August 4, 2009 Resolution abandoned, reversed, and modified well-established legal principles on the determinative test as to whether an action is one capable of pecuniary estimation or not, and on findings of good faith and bad faith, and the principle of estoppel. He further claims that, in so doing, the Court violated the principle of stare decisis.

I disagree.

Stare decisis simply means that, for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. Thus, where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of stare decisis is a bar to any attempt to relitigate the same issue.[18]

David Lu faults the Court in not applying our pronouncement in *Lapitan v. Scandia Inc., et al.*[19] and subsequent cases in the determination of whether an action is one incapable of pecuniary estimation. He further questions the non-application of established jurisprudence on the principle of estoppel in failing to raise the issue of non-payment of docket fees at the first opportunity. Finally, he assails the non-application of the presumption of good faith and the burden to prove bad faith.

Suffice it to state that the cited cases are not on all fours with the present case. The principle of stare decisis has no application to the factual setting of the instant case.[20] The totality of the circumstances prevailing in this case had been considered in our August 4, 2009 Resolution and, unquestionably, we did not abandon or depart from the doctrines laid down in the cases cited by David Lu. We only applied the law and pertinent jurisprudence in accordance with the facts of this case. To be sure, the issues have been thoroughly discussed in the above Resolution which I now reiterate.

The criteria in determining the nature of the action are the allegations of the complaint and the character of the

reliefs sought.

The complaint and amended complaint readily show that the primary and ultimate intention of the plaintiffs therein was the return of the subject shares of stock to LLDC. Thus, the 600,000 shares were indeed the subject matter of the litigation. The shares of stock have an estimated value, which was declared by the plaintiffs themselves in their complaint to be P1,087,055,105. As this was the stated value of the property in litigation, the docket fees should have been computed based on this amount.

Moreover, David Lu prayed for the liquidation and distribution of the assets of the corporation so that he might receive his share therein. Among the assets of the corporation are real properties. Hence, the case was, in actuality, a real action which had for its objective the recovery of real property. That the case involved a real action was acknowledged by David Lu when he moved for the annotation of notices of lis pendens on the properties owned by LLDC. In a real action, the assessed value of the property, or if there is none, the estimated value thereof, shall be alleged by the claimant and shall be the basis in computing the docket fees.

When David Lu sought the annotation of notices of lis pendens on the titles of LLDC, he acknowledged that the complaint affected a title or a right to the possession of the LLDC real properties. In other words, he affirmed that though the complaint was a declaration for the nullity of the issuance of share issue, the action was indeed one which affected the real properties of the corporation. This being so, he must have been fully aware that the docket fees would be based on the value of the realties involved. The silence or inaction to point this out to the Clerk of Court, who computed the docket fees, becomes highly suspect. Therefore, the non-payment of the correct docket fees was not only the result of the erroneous computation of the fees by the Clerk of Court; rather, it was the consequence of David Lu's non-declaration of the true nature of the action. This may be characterized as an act of bad faith, indicating an attempt to defraud the government by avoiding the payment of the correct docket fees.

Indeed, in a number of cases, this Court refrained from dismissing the complaint/petition despite the insufficient payment of the required fees.[21] However, in those cases, there was no intention to defraud the government. Considering that there was bad faith on the part of David Lu and a clear intent to avoid payment of the correct docket fees, the strict rule set forth in *Manchester Development Corporation v. Court of Appeals*[22] is applicable warranting the dismissal of the complaint.

Anent the issue of estoppel, respondents are not estopped from challenging the jurisdiction of the trial court. They raised the insufficiency of the docket fees before the trial court rendered judgment and continuously maintained their position even on appeal to the CA. Although the manner of challenge was erroneous, they should not be deemed to have waived their right to assail the jurisdiction of the trial court.

Estoppel, being in the nature of a forfeiture, is not favored by law. It is to be applied rarely - only from necessity and only in extraordinary circumstances. The doctrine must be applied with great care and the equity must be strong in its favor. When misapplied, the doctrine of estoppel may be the most effective weapon for the accomplishment of injustice.[23]

Clearly, the RTC did not acquire jurisdiction and the complaint before it should be dismissed. Consequently, the decision rendered therein is null and void. With the foregoing disquisition, there is no need to further discuss the other issues raised by David Lu. As prayed for by respondents, an entry of judgment must be issued.

One final note. As can be gleaned from the discussion above, there is no abandonment, modification, or reversal of well-established doctrines. I maintain that there is no extraordinarily persuasive reason to refer the case to the Court En Banc. To be sure, the Court En Banc is not an appellate court to which decisions or resolutions of a Division may be appealed.[24]

Premises considered, I vote to DENY David Lu's motions.

[1] Rollo (G.R. No. 157381), pp. 1421-1451.

[2] Id. at 1457-1487.

[3] Id. at 1488-1497.

[4] Id. at 1529-1541.

[5] Id. at 1573-1585.

[6] Id. at 1586-1589.

[7] Id. at 1590-1594.

[8] Id. at 1595-1598.

[9] Id. at 1599-1606.

[10] Motion for Leave to File and Admit Attached Manifestation dated May 24, 2010, pp. 1-4; id.

[11] Manifestation dated May 24, 2010, pp. 1-6; id.

[12] Id. at 1013.

[13] Id. at 1362-1390.

[14] Id. at 1375.

[15] Id. at 1391-1417.

[16] Id. at 1418-1419.

[17] Id. at 1445.

[18] Grand Placement and General Services Corporation v. Court of Appeals, G.R. No. 142358, January 31, 2006, 481 SCRA 189, 203-204.

[19] 133 Phil. 526 (1968).

[20] Chavez v. National Housing Authority, G.R. No. 164527, August 15, 2007, 530 SCRA 235, 290.

[21] Intercontinental Broadcasting Corporation (IBC-13) v. Alonzo-Legasto, G.R. No. 169108, April 18, 2006, 487 SCRA 339; Yambao v. Court of Appeals, G.R. No. 140894, November 27, 2000, 346 SCRA 141; Ayala Land, Inc. v. Carpo, G.R. No. 140162, November 22, 2000, 345 SCRA 579.

[22] 233 Phil. 579 (1987).

[23] Figueroa v. People, G.R. No. 147406, July 14, 2008, 558 SCRA 63.

[24] United Planters Sugar Milling Co., Inc (UPSUMCO) v. The Honorable Court of Appeals, Philippine National Bank (PNB) and Asset Privatization Trust (APT), as Trustee of the Republic of the Philippines, G.R. No. 126890, March 9, 2010.

SEPARATE CONCURRING OPINION

PERALTA, J.:

It is axiomatic that this Court's decision form part of the law of the land to which the entire citizenry adheres. It is, therefore, righteous that this Court had reconsidered and reassessed its pronouncements in the Resolution dated August 4, 2009, otherwise set precedents and iron-clad doctrines on jurisdiction of the Courts would have been drastically affected and may have been inadvertently laid aside.

At the outset, a brief narration of the factual and procedural antecedents that transpired and lead to the filing of these cases is in order.

The consolidated cases emanated from the complaint filed by David Lu, et al. (David, et al.) against Paterno Lu Ym, Sr. and sons (Lu Ym father and sons) and Ludo and Lu Ym Development Corporation (LLDC) for "Declaration of Nullity of Share Issue, Receivership and Dissolution" way back in August 14, 2000.

On March 1, 2004, the trial court rendered a Decision in favor of David, et al., wherein it categorically annulled the issuance of the shares of stock paid and subscribed by Lu Ym father and sons at less than par value, and ordered the dissolution and liquidation of the asset of LLDC. Lu Ym father and sons appealed the decision before the CA, docketed as CA-G.R. CV No. 81163.

Meanwhile, several matters which stemmed from the complaint were brought before this Court via three petitions. Eventually, on August 26, 2008, the Court rendered a Decision in favor David, et al., the decretal portion of which reads:

WHEREFORE, premises considered, the petitions in G.R. Nos. 153690 and 157381 are DENIED for being moot and academic; while the petition in G.R. No. 170889 is DISMISSED for lack of merit. Consequently, the Status Quo Order dated January 23, 2006 is hereby LIFTED.

The Court of Appeals is DIRECTED to proceed with CA-G.R. CV No. 81163 and to resolve the same with dispatch.

SO ORDERED.

In G.R. No 153690, with David, et al. assailing the appellate court's resolutions dismissing their complaint for its incomplete signatory in the certificate of non-forum shopping and, consequently, annulling the placing of the subject corporation under receivership pendente lite, the Court found the same to be moot with the admission by the trial court of David, et al.'s Amended Complaint filed by them, pursuant to the trial court's order to conform to the requirements of the Interim Rules of Procedure Governing Intra-Corporate Controversies. Since the amended pleading supersedes the pleading that it amends, the original complaint was deemed withdrawn from the records. The Court noted that both parties admitted the mootness of the issue and that the trial court already rendered a decision on the merits in said case. It added that the Amended Complaint stands, since Lu Ym father and sons availed of an improper mode (via an Urgent Motion filed with this Court) to assail the admission of the Amended Complaint.[1]

In G.R. No. 157381, with Lu Ym father and sons challenging the appellate court's resolution restraining the trial court from proceeding with their motion to lift the receivership order which was filed during the pendency of G.R. No. 153690, the Court resolved that the propriety of such injunction was mooted by the amendment of the complaint and by the trial court's decision on the merits. The motion having been filed ancillary to the main action, which main action was already decided on the merits by the trial court, there is thus nothing more to enjoin.[2]

G.R. No. 170889 involves the denial of Lu Ym father and sons' application for a writ of preliminary injunction by the appellate court that is handling CA-G.R. CV No. 81163. In dismissing the petition, the Court found no merit on their claim of lack of jurisdiction for David, et al.'s non-payment of the correct docket fees.[3] The Court systematically belied the arguments raised by Lu Ym father and sons as follows:

In the instant case, however, we cannot grant the dismissal prayed for because of the following reasons: First, the case instituted before the RTC is one incapable of pecuniary estimation. Hence, the correct docket fees were paid. Second, John and LLDC are estopped from questioning the jurisdiction of the trial court because of their active participation in the proceedings below, and because the issue of payment of insufficient docket fees had been belatedly raised before the Court of Appeals, i.e., only in their motion for reconsideration. Lastly, assuming that the docket fees paid were truly inadequate, the mistake was committed by the Clerk of Court who assessed the same and not imputable to David; and as to the deficiency, if any, the same may instead be considered a lien on the judgment that may thereafter be rendered.[4]

On August 4, 2009, however, despite the firm and sound rationale enunciated and methodically pronounced in the decision, this Court issued a Resolution completely vacating and departing from the logic and reasoning of the earlier decision.

David Lu then filed a Motion for Reconsideration and Motion to Refer Resolution to the Court En Banc. On September 23, 2009, We issued a Resolution denying the motion with finality for lack of merit. Aggrieved, David Lu now comes before this Court on Second Motion for Reconsideration.

While a second motion for reconsideration is, as a general rule, a prohibited pleading, it is within the sound discretion of the Court to admit the same, provided it is filed with prior leave whenever substantive justice may be better served thereby.[5] Verily, the propriety of entertaining a second motion for reconsideration is not foreign in this jurisdiction, it would not be the first time that this Court would consider and actually grant the motion. In the case of *Valeroso v. Court of Appeals*,[6] We elucidated that:

This is not the first time that this Court is suspending its own rules or excepting a particular case from the operation of the rules. In *De Guzman v. Sandiganbayan*, despite the denial of De Guzman's motion for reconsideration, we still entertained his Omnibus Motion, which was actually a second motion for reconsideration. Eventually, we reconsidered our earlier decision and remanded the case to the Sandiganbayan for reception and appreciation of petitioner's evidence. In that case, we said that if we would not compassionately bend backwards and flex technicalities, petitioner would surely experience the disgrace and misery of incarceration for a crime which he might not have committed after all. Also in *Astorga v. People*, on a second motion for reconsideration, we set aside our earlier decision, re-examined the records of the case, then finally acquitted Benito Astorga of the crime of Arbitrary Detention on the ground of reasonable doubt. And in *Sta. Rosa Realty Development Corporation v. Amante*, by virtue of the January 13, 2004 En Banc Resolution, the Court authorized the Special First Division to suspend the Rules, so as to allow it to consider and resolve respondent's second motion for reconsideration after the motion was heard on oral arguments. After a re-examination of the merits of the case, we granted the second motion for reconsideration and set aside our earlier decision.

Clearly, suspension of the rules of procedure, to pave the way for the re-examination of the findings of fact and conclusions of law earlier made, is not without basis.

We would like to stress that rules of procedure are merely tools designed to facilitate the attainment of justice. They are conceived and promulgated to effectively aid the courts in the dispensation of justice. Courts are not slaves to or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that, on the balance, technicalities take a backseat to substantive rights, and not the other way around. Thus, if the application of the Rules would tend to frustrate

rather than to promote justice, it would always be within our power to suspend the rules or except a particular case from its operation.[7]

Besides, the first motion for reconsideration filed by David, et al. should not have been denied outright by a mere minute resolution.

It should be pointed out that in the Resolution dated August 4, 2009, Madame Justice Conchita Carpio-Morales emphatically registered her disapproval to this Court's complete turnaround and departure from the earlier decision thru her Dissenting Opinion.

However, when David, et al. filed a motion for reconsideration of the Resolution, the motion was not given much consideration and was merely brushed aside through a mere minute resolution. Considering that there was a standing dissent, David, et al.'s motion should not have been denied outright. When a dissenting opinion was registered against the majority opinion in a decision and, later on, a motion for reconsideration was filed by the aggrieved party, the Court should resolve the motion via a signed resolution.

Hence, on this premise, it was recommended[8] that the Motion to Refer Resolution to the Court En Banc be granted. Consequently, in accordance with the Rules, the Second Division granted the motion and the cases were subsequently referred to the Court En Banc, which the latter accepted in the Resolution dated November 23, 2010.[9] Thereafter, by the concurrence of the majority of the Members of the Court who took part in the deliberations on the issues involved, the Court granted the Motion for Reconsideration.

Anent, the substantive aspect, as aptly argued by David, et al., this Court's pronouncements in the August 4, 2009 Resolution abandoned, reversed, and departed from well-settled jurisprudence, which warrant a second hard look by this Court.

First, the subject matter of the action is incapable of pecuniary estimation.

In a long line of decisions,[10] this Court has laid down the rule in order for an action to be considered one that is incapable of pecuniary estimation. The test in determining whether the subject matter of an action is incapable of pecuniary estimation is by ascertaining the nature of the principal action or the remedy sought. This Court has consistently held that for an action to be considered one capable of pecuniary estimation the action must have, as the principal remedy sought, the recovery of property or a sum of money. Otherwise, if the principal remedy sought is not the recovery of property or a sum of money, the action is one incapable of pecuniary estimation.

As early as in the case of *Lapitan v. Scandia, Inc., et al.*,[11] this Court has laid down the guide in determining whether the subject matter of an action is capable or incapable of pecuniary estimation. Said this Court:

x x x [I]n determining whether an action is one the subject matter of which is not capable of pecuniary estimation, this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the courts of first instance [now Regional Trial Courts] would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought like in suits to have the defendant perform his part of the contract (specific performance) and in actions for support, or for annulment of a judgment or to foreclose a mortgage, this court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by courts of first instance [now Regional Trial Courts]. x x x.[12]

In the case at bar, David Lu does not claim to be the owner of the subject shares of stocks and, as such, entitled to be its transferees. What is primarily being sought is the nullification of the issuance of the said shares of stocks

and the dissolution of LLDC. Clearly, these remedies do not have for their principal purpose the recovery of property or a sum of money. However, in the eventuality that property, real or personal, will be distributed to the stockholders as a result of the annulment and dissolution, it would only be a consequence of the main action.

Moreover, the mere mention of the value of the subject shares of stocks does not make the present action one capable of pecuniary estimation; it is merely a narrative to highlight the inequitable price at which the stocks were transferred. Such narrative description of the value of the subject stocks should not be equated as making the action one that is capable of pecuniary estimation and used as the basis for fixing the docket fees.

To conclude otherwise would certainly create an absurdity where the mere mention of property or a sum of money in an action would result in the action being classified as one that is capable of pecuniary estimation. In such case, all actions can be considered capable of pecuniary estimation, since every case involves the recovery or vindication of something to which the plaintiff or complainant can affix his own valuation.

To maintain this line of reasoning would certainly have far reaching effects on established jurisprudential precepts.

Moreover, not even the erroneous annotation of a notice of lis pendens could belie the conclusion that the action is one not capable of pecuniary estimation. In the present action, as in most cases, it just so happens that real properties are involved. However, it does not necessarily follow that when a party in an action erroneously causes the annotation of a notice of lis pendens on real properties he changes the nature of an action from one incapable of pecuniary estimation to one capable of pecuniary estimation. In the case at bar, this does not make the action a real action for what is still being sought is the nullification of the issuance of the shares of stocks and the dissolution of LLDC, which is an action incapable of pecuniary estimation.

Second, Lu Ym father and sons are already estopped from questioning the jurisdiction of the trial court.

As properly observed in the earlier decision, Lu Ym father and sons belatedly raised the issue of insufficient payment of docket fees. In fact, the first time Lu Ym father and sons raised this matter was in their motion for reconsideration before the CA. Up to that stage of the action, Lu Ym father and sons actively participated in the proceedings before the CA and the trial court, never questioning the correct amount of docket fees paid by David, et al.

Moreover, it cannot be said that Lu Ym father and sons' inquiry with the Clerk of Court on the amount of docket fees paid by David, et al. and their subsequent inquiry with the Office of the Court Administrator (OCA), as to the correctness of the amount paid by David, et al., was the proper procedure to question the jurisdiction of the trial court. If Lu Ym father and sons really believed that the correct amount of docket fees was not paid, nothing was stopping them to question it before the trial court. Instead, Lu Ym father and sons speculated on the fortunes of litigation, which is clearly against the policy of the Court, and merely waited for a favorable judgment from the trial court. Verily, if a party invokes the jurisdiction of a court, he cannot thereafter challenge the court's jurisdiction in the same case.[13] Moreover, to question the jurisdiction of the trial court over the case due to the alleged non-payment of the correct amount of docket fees should be disallowed, having been raised for the first time on appeal.[14] Much more when it was raised only in a motion for reconsideration as in the case at bar.

In the case of *National Steel Corporation v. Court of Appeals*,^[15] this Court held that:

The court acquires jurisdiction over the action if the filing of the initiatory pleading is accompanied by the payment of the requisite fees, or, if the fees are not paid at the time of the filing of the pleading, as of the time of full payment of the fees within such reasonable time as the court may grant, unless, of course, prescription has set in the meantime.

It does not follow, however, that the trial court should have dismissed the complaint for failure of private respondent to pay the correct amount of docket fees. Although the payment of the proper docket fees is a jurisdictional requirement, the trial court may allow the plaintiff in an action to pay the same within a reasonable time before the expiration of the applicable prescriptive or reglementary period. If the plaintiff fails to comply within this requirement, the defendant should timely raise the issue of jurisdiction or else he would be considered in estoppel. In the latter case, the balance between the appropriate docket fees and the amount actually paid by the plaintiff will be considered a lien or any award he may obtain in his favor.[16]

Thus, Lu Ym father and sons are now estopped from raising this issue. Indeed, while the lack of jurisdiction of a court may be raised at any stage of an action, nevertheless, the party raising such question may be estopped if he has actively taken part in the very proceedings which he questions and he only objects to the court's jurisdiction because the judgment or the order subsequently rendered is adverse to him.

Third, bad faith is not present in the case at bar, since there was no intention on the part of David, et al. to defraud the government.

David, et al. paid the docket fees for an action incapable of pecuniary estimation, as computed by the Clerk of Court. If there was, therefore, any error in the payment of the correct amount of docket fees the mistake could be imputed upon the Clerk of Court and not David, et al. As aptly observed in the earlier decision:

It may be recalled that despite the payment of insufficient fees, this Court refrained from dismissing the complaint/petition in *Intercontinental Broadcasting Corporation (IBC-13) v. Alonzo-Legasto*, *Yambao v. Court of Appeals* and *Ayala Land, Inc. v. Carpo*. In those cases, the inadequate payment was caused by the erroneous assessment made by the Clerk of Court. In *Intercontinental*, we declared that the payment of the docket fees, as assessed, negates any imputation of bad faith to the respondent or any intent of the latter to defraud the government. Thus, when insufficient filing fees were initially paid by the respondent, and there was no intention to defraud the government, the Manchester rule does not apply. In *Yambao*, this Court concluded that petitioners cannot be faulted for their failure to pay the required docket fees for, given the prevailing circumstances, such failure was clearly not a dilatory tactic or intended to circumvent the Rules of Court. In *Ayala Land*, the Court held that despite the jurisdictional nature of the rule on payment of docket fees, the appellate court still has the discretion to relax the rule in meritorious cases.

In the instant case, David paid the docket fees as assessed by the Clerk of Court. Even if the amount was insufficient, as claimed by John and LLDC, fraud and bad faith cannot be attributed to David to warrant the dismissal of his complaint. Consistent with the principle of liberality in the interpretation of the Rules, in the interest of substantial justice, this Court had repeatedly refrained from dismissing the case on that ground alone. Instead, it considered the deficiency in the payment of the docket fees as a lien on the judgment which must be remitted to the Clerk of Court of the court a quo upon the execution of the judgment.

To be sure, this Court in *Ayala Land, Inc. v. Spouses Carpo*,[17] citing *Segovia v. Barrios*,[18] held that:

x x x As early as 1946, in the case of *Segovia v. Barrios*, we ruled that where an appellant in good faith paid less than the correct amount for the docket fee because that was the amount he was required to pay by the clerk of court, and he promptly paid the balance, it is error to dismiss his appeal because -

every citizen has the right to assume and trust that a public officer charged by law with certain duties knows his duties and performs them in accordance with law. To penalize such citizen for relying upon said officer in all good faith is repugnant to justice.

Despite the passage of time, the ruling in *Segovia* is still good law which courts, in the exercise of its discretion, can still apply. In the present controversy, David, et al. paid the exact amount of docket fees as instructed by the Clerk of Court. Moreover, even if the docket fees paid by David, et al. was not the proper amount to be paid, the

deficiency in the payment of the docket fees would only constitute as a lien on the judgment, which can be remitted to the Clerk of Court of the court a quo upon the execution of the judgment.

I, therefore, concur with the majority opinion.

[1] Dissenting Opinion of Madame Justice Conchita Carpio Morales, p. 2.

[2] *Id.*

[3] *Id.* at 3.

[4] *Lu v. Lu Ym, Sr.*, G.R. Nos. 153690, 157381, and 170889, August 26, 2008, 563 SCRA 254, 274.

[5] *Valeroso v. Court of Appeals*, G.R. No. 164815, September 3, 2009, 598 SCRA 41, 51, citing *Astorga v. People*, 437 SCRA 152, 155 (2004).

[6] G.R. No. 164815, September 3, 2009, 598 SCRA 41.

[7] *Id.* at 51-52.

[8] Reflections of Justice Diosdado M. Peralta dated December 14, 2009.

[9] The Internal Rules of the Supreme Court (A.M. No. 10-4-20-SC), Rule 12, Sec. 1.

[10] See *Iniego v. Purganan*, G.R. No. 166876, March 4, 2006, 485 SCRA 394, 400-401; *Spouses Huguet v. Spouses Embudo*, 453 Phil. 170, 176-177 (2003); *Radio Communications of the Philippines, Inc. v. Court of Appeals*, 435 Phil. 62, 66 (2002); *Barangay San Roque, Talisay, Cebu v. Heirs of Pastor*, 389 Phil. 466, 471 (2000); *Russell v. Vestil*, 364 Phil. 392, 400 (1999); *De Leon v. Court of Appeals*, 350 Phil. 535, 541 (1998); *Raymundo v. Court of Appeals*, G.R. No. 97805, September 5, 1992, 213 SCRA 457, 460-461; *Amorganda v. Court of Appeals*, 248 Phil. 442, 453 (1988); *Singson v. Isabela Sawmill*, 177 Phil. 575, 588 (1979); *Lapitan v. Scandia, Inc., et al.*, 133 Phil. 526 (1968).

[11] *Lapitan v. Scandia, Inc., et al.*, *supra*.

[12] *Id.* at 528. (Emphasis supplied.)

[13] *Heirs of Bertuldo Hinog v. Melicor*, 495 Phil. 422, 434 (2005)

[14] *Idolor v. Court of Appeals*, 490 Phil. 808, 816 (2005)

[15] 362 Phil. 150 (1999).

[16] *Id.* at 159. (Italics supplied.)

[17] 399 Phil. 327, 334 (2000).

[18] 75 Phil 764 (1946).

CONCURRING OPINION

BERSAMIN, J.:

I concur with Associate Justice Conchita Carpio Morales, whose lucid opinion for the Majority presents a most thorough consideration and apt resolution of the issues.

In writing this concurring opinion, I only desire to express some thoughts, hoping to contribute to the elucidation of decisive matters.

G.R. No. 153690

On August 14, 2000, David Lu, Rosa Go, Silvano Ludo, and CL Corporation filed a complaint in the Regional Trial Court (RTC) in Cebu City (docketed as Civil Case No. CEB-25502 and assigned to Branch 5), praying for the nullification of the issuance of the 600,000 unsubscribed and unissued shares of the Ludo and Luym Development Corporation (LLDC) for allegedly less than their real value in order to favor Lu Ym father and sons. The plaintiffs maintained that Lu Ym father and sons had gravely abused their powers as members of LLDC's Board of Directors in issuing such shares to the former's prejudice, thereby warranting as an ultimate remedy the dissolution of LLDC. The complaint sought the following reliefs, viz:

WHEREFORE, based on the foregoing premises, it is respectfully prayed that this Honorable Court rule in favor of the Plaintiffs, as follows:

1. Declare null and void the issuance of 600,000 unsubscribed and unissued shares to Defendants Lu Ym father and sons and their spouses, children and holding companies, for a price of only one-eighteenth of their real value, as having been done in breach of directors' fiduciary duty to stockholders, in violation of Plaintiffs' minority stockholders' rights, and in unjust enrichment of the Defendants, majority/controlling stockholders/directors, at the expense of their cousins, the other stockholders.
2. Order the dissolution of Defendant Ludo and LuYm Development Corporation, in order to protect the rights and redress the injuries of Plaintiffs;
3. During the pendency of the instant case, order the appointment of a receiver pendente lite for LuDo and LuYm Development Corporation.

Such other reliefs as may be just and equitable on the premises are likewise prayed for.[1]

Defendants Lu Ym father and sons filed a motion to dismiss, citing as grounds that only one of the plaintiffs had signed the complaint, thereby violating the rule against forum shopping; and that the parties did not exert earnest efforts towards a compromise.

The RTC denied the motion to dismiss, holding that the signature of one of the plaintiffs was a substantial compliance.

On February 16, 2001, the RTC, upon motion of the plaintiffs, placed LLDC under receivership pendente lite. The RTC subsequently appointed two receivers.

Lu Ym father and sons then filed a petition for certiorari in the Court of Appeals (CA) to assail the denial of their motion to dismiss and the placing of LLDC under receivership (C.A.-G.R. SP No. 64154). However, the CA dismissed the petition because only two petitioners had signed the verification and the certification against forum shopping.

Lu Ym father and sons refiled the petition (C.A.-G.R. SP No. 64523). Although initially dismissing the refiled petition upon finding no grave abuse of discretion on the part of the RTC in denying the motion to dismiss and because of the prematurity of the challenge against the receivership (due to the pendency of the petitioners'

motion for reconsideration thereon in the RTC), the CA reconsidered and reinstated the petition upon the petitioners' motion for reconsideration. The petitioners later presented a supplement to their petition.

On December 20, 2001, the CA granted the petition for certiorari of Lu Ym father and sons; dismissed the complaint of David Lu, et al. on the ground of their failure to sign the certificate of non-forum shopping; and annulled the placing of LLDC under receivership as a consequence of the dismissal of the complaint.

After the CA denied their motion for reconsideration, David Lu, et al. elevated the decision of the CA to this Court (G.R. No. 153690).

G.R. No. 157381

In the meanwhile, in Civil Case No. CEB-25502, Lu Ym father and sons sought the inhibition of the Presiding Judge of Branch 5 of the RTC. After the inhibition was granted on October 1, 2002, Civil Case No. CEB-25502 was re-raffled to Branch 11, presided by Judge Isaias Dicdican (now a Member of the CA), who directed the parties to amend their respective pleadings in order to conform with the Interim Rules of Procedure Governing Intra-Corporate Disputes promulgated pursuant to Republic Act No. 8799. Thus, Civil Case No. CEB-25502 was re-docketed as SRC Case No. 021-CEB.

On October 8, 2002, Lu Ym father and sons moved for the lifting of the receivership, the motion for which the RTC immediately set for hearing. As a result, David Lu, et al. brought a petition for certiorari and prohibition in the CA to assail the RTC's proceeding to hear the motion to lift the receivership (C.A.-G.R. SP No. 73383). The CA issued a temporary restraining order (TRO) to stop the RTC's hearing of the motion.

On February 27, 2003, the CA granted the petition and ordered the RTC to desist from conducting any proceedings relating to the receivership over LLDC, holding that the proceedings on receivership could not proceed without the parties first amending their pleadings pursuant to the order to that effect. The CA explained that the propriety of the appointment of a receiver could not be determined because the RTC would have to base its resolution on the amended pleadings; and that the pendency of G.R. No. 153690 also required the deferment of any action on the motion for the lifting of the receivership.

Dissatisfied with the CA's decision, Lu Ym father and sons appealed to this Court (G.R. No. 157381).

G.R. No. 170889

On March 31, 2003, David Lu, et al. filed their motion to admit their amended complaint, which the RTC granted on July 18, 2003.[2]

The amended complaint contained the following reliefs, viz:

WHEREFORE, based on the foregoing premises, it is respectfully prayed that this Honorable Court rule in favor of the Plaintiffs, as follows:

1. Declare null and void the issuance of 600,000 unsubscribed and unissued shares of the defendant corporation to Defendants Lu Ym father and sons and their spouses, children, and holding companies, for a price of one-eighteenth of their real value, for being inequitable, having been done in breach of director's fiduciary duty to stockholders, in violation of Plaintiffs' minority stockholders' rights, and in unjust enrichment of the Defendants, majority controlling stockholders/directors, at the expense of their cousins, the other stockholders.
2. Order the dissolution of Defendant Ludo and Luym Development Corporation, in order to protect the rights and redress the injuries of Plaintiffs;

3. Order the creation of a management committee pendente lite, and order receiver Luis Cañete to turn over all assets and records to the management committee.

Such other relief as may be just and equitable on the premises are likewise prayed for.[3]

On January 23, 2004, Lu Ym father and sons inquired from the Clerk of Court on the amount paid by David Lu, et al. as docket fees. John Lu Ym further inquired from the Office of the Court Administrator (OCA) on the correctness of the docket fees thus paid. After a series of letters sent to it, the OCA informed John Lu Ym that the matter of docket fees should be brought to the RTC's attention, because the OCA was not in the position to give any opinion on the matter.

On March 1, 2004, the RTC decided SRC Case No. 021-CEB on the merits. It annulled the issuance of the 600,000 shares, thereby divesting Lu Ym father and sons of their shares, and cancelled their certificates of stock. It ordered the dissolution of LLDC and the liquidation of its assets. It declared the decision immediately executory. A management committee was created to take over LLDC and the corporate officers were stripped of their powers.

Lu Ym father and sons timely appealed to the CA (C.A.-G.R. CV No. 81163), where they applied for a TRO to defeat the executory nature of the RTC decision. David Lu, et al. opposed the application for TRO.

Although it issued a TRO, the CA denied the application for a writ of preliminary injunction on September 6, 2004. Lu Ym father and sons moved for the reconsideration of the denial of their application for injunction, citing, in addition, the insufficiency of the docket fees paid in the RTC.

On December 8, 2005, the CA denied the motion for reconsideration of Lu Ym father and sons, and ruled that they should raise the sufficiency of the docket fees in their appellant's brief and that the issue should be resolved in the appeal.

Dissatisfied, Lu Ym father and sons initiated a special action for certiorari and prohibition (G.R. No. 170889).

Decision dated August 26, 2008

The Court consolidated G.R. No. 153690, G.R. No. 157381 and G.R. No. 170889.

On August 26, 2008, the Court (Third Division) promulgated its decision,[4] disposing:

WHEREFORE, premises considered, the petitions in G.R. Nos. 153690 and 157381 are DENIED for being moot and academic; while the petition in G.R. No. 170889 is DISMISSED for lack of merit. Consequently, the Status Quo Order dated January 23, 2006 is hereby LIFTED.

The Court of Appeals is DIRECTED to proceed with CA-G.R. CV No. 81163 and to resolve the same with dispatch.

SO ORDERED.

In the main, the Court (Third Division) ruled that it could not dismiss the initial complaint on the ground of lack of jurisdiction based on the insufficiency of the docket fees because: (a) the suit instituted in the RTC was an action whose subject matter was not capable of pecuniary estimation, for which the correct docket fees had been paid; (b) John Lu and LLDC were estopped from questioning the jurisdiction of the RTC by their active participation in the case and by their having belatedly raised the issue of docket fees in the CA through their motion for reconsideration; and (c) on the assumption that the docket fees were insufficient, the insufficiency was the Clerk of Court's mistake and the deficiency might be considered as a lien on the judgment.[5]

Resolution dated August 4, 2009

Through its Resolution dated August 4, 2009,[6] however, the Court (Special Third Division), by a vote of 4 to 1,[7] executed a complete turnabout (upon a "deeper reflection"), and declared that the RTC did not acquire jurisdiction for failure of David Lu, et al. to pay the correct amount of docket fees, viz:

WHEREFORE, in view of the foregoing, the Motion for Reconsideration filed by John Lu Ym and Ludo & LuYm Development Corporation is GRANTED. The Decision of this Court dated August 26, 2008 is RECONSIDERED and SET ASIDE. The complaint in SRC Case No. 021-CEB, now on appeal with the Court of Appeals in CA G.R. CV No. 81163, is DISMISSED.

All interlocutory matters challenged in these consolidated petitions are DENIED for being moot and academic.

SO ORDERED.[8]

The Majority in the Special Third Division held that the extent of the damage or injury allegedly suffered by David Lu, et al. could be characterized as capable of pecuniary estimation; that the 600,000 shares of stock were properties in litigation, whose definite value should be the basis for computing the docket fees; and that the RTC did not acquire jurisdiction over the action without their payment of the correct amount of docket fees.[9] In addition, they noted John Lu and LLCD's argument that David Lu, et al. were guilty of fraud by failing to mention any real property in their complaint despite annotating the notices of lis pendens on LLCD's properties; that their doing so reflected their objective of recovering real property, indicating the nature of the case as a real action affecting title to or the right to possession of real properties; that their silence or inaction to point this out to the Clerk of Court who had computed the docket fees constituted fraud; that Lu Ym father and sons were not estopped from challenging the RTC's jurisdiction because they had raised the insufficiency of the docket fees -- albeit with the OCA and not directly with the RTC -- before the RTC rendered its decision; and that the erroneous manner of their challenge as to the sufficiency of the docket fees should not be deemed a waiver of their right to assail the jurisdiction of the RTC.

In her Dissent, Justice Carpio Morales reiterated the wisdom and soundness of the Decision promulgated on August 26, 2008. She emphasized that the subject matter of the action was not capable of pecuniary estimation despite the mention of the value of the shares of stock, or the annotation of the notice of lis pendens on corporate properties; that the mere inquiry on the propriety of the docket fees paid by David Lu, et al. in the action made by Lu Ym and sons to an improper office like the OCA was not the act to raise the jurisdictional question prior to the rendition of the RTC's decision; that the erroneous annotation of the notice of lis pendens by David Lu, et al. did not negate good faith, and did not have the effect of changing the nature of the action; that a review of the rules on legal fees prevailing at the time of the commencement of the action indicated that an intra-corporate controversy like the action of David Lu, et al. constituted an action whose subject matter was incapable of pecuniary estimation, rendering it to be still wise and sound to adhere to the Court's earlier position (August 26, 2008) that even if the docket fees were inadequate, the mistake was attributable to the Clerk of Court, not to David Lu, et al.; and that the deficiency, if any, should be considered as a lien on the judgment.

David Lu, et al.'s Motion for Reconsideration and Motion to Refer Resolution to the Court En Banc was denied with finality on September 23, 2009.

Matters for Resolution

Undeterred, David Lu, et al. have filed the following, to wit: (a) Second Motion for Reconsideration and Motion to Refer Resolution to the Court En Banc; (b) Amended Second Motion for Reconsideration and Motion to Refer Resolution to the Court En Banc; (c) Motion for Leave to File Motion for Clarification, Amended Second Motion for Reconsideration and Motion to Refer Resolution to the Court En Banc; (d) Motion for Clarification, and

Supplement to the Second Motion for Reconsideration with Motion to Dismiss.

Submissions

I humbly submit the following in support of my concurrence with the Majority.

A.

Subject matter of action of David Lu, et al.

is not capable of pecuniary estimation;

Hence, filing fee actually paid was correct

The decisive question is whether SRC Case No. 021-CEB could overcome the challenge from Lu Ym father and sons to the effect that jurisdiction over the claim did not vest in the RTC due to the failure of David Lu, et al., as plaintiffs, to pay the correct amount of docket fees at the time of the filing of their complaint. The resolution of the question depends on the correct determination of whether or not the action of David Lu, et al. was one whose subject matter was capable of pecuniary estimation.

To me, the Decision promulgated on August 26, 2008 soundly found and correctly held that because David Lu, et al. had "paid the docket fees for an action the subject of which was incapable of pecuniary estimation, as computed by the Clerk of Court, the (RTC) validly acquired jurisdiction over the case." The following excerpts of pertinent portions of the Decision promulgated on August 26, 2008 demonstrate the soundness and correctness of the Decision, viz:

A court acquires jurisdiction over a case only upon the payment of the prescribed fees. The importance of filing fees cannot be gainsaid for these are intended to take care of court expenses in the handling of cases in terms of costs of supplies, use of equipment, salaries and fringe benefits of personnel, and others, computed as to man-hours used in the handling of each case. Hence, the non-payment or insufficient payment of docket fees can entail tremendous losses to the government in general and to the judiciary in particular.

In the instant case, however, we cannot grant the dismissal prayed for because of the following reasons: First, the case instituted before the RTC is one incapable of pecuniary estimation. Hence, the correct docket fees were paid. Second, John and LLDC are estopped from questioning the jurisdiction of the trial court because of their active participation in the proceedings below, and because the issue of payment of insufficient docket fees had been belatedly raised before the Court of Appeals, i.e., only in their motion for reconsideration. Lastly, assuming that the docket fees paid were truly inadequate, the mistake was committed by the Clerk of Court who assessed the same and not imputable to David; and as to the deficiency, if any, the same may instead be considered a lien on the judgment that may thereafter be rendered.

The Court had, in the past, laid down the test in determining whether the subject matter of an action is incapable of pecuniary estimation by ascertaining the nature of the principal action or remedy sought. If the action is primarily for recovery of a sum of money, the claim is considered capable of pecuniary estimation. However, where the basic issue is something other than the right to recover a sum of money, the money claim being only incidental to or merely a consequence of, the principal relief sought, the action is incapable of pecuniary estimation.

In the current controversy, the main purpose of the complaint filed before the RTC was the annulment of the issuance of the 600,000 LLDC shares of stocks because they had been allegedly issued for less than their par value. Thus, David sought the dissolution of the corporation and the appointment of receivers/management committee. To be sure, the annulment of the shares, the dissolution of the corporation and the appointment of receivers/management committee are actions which do not consist in the recovery of a sum of money. If, in the end, a sum of money or real property would be recovered, it would simply be the consequence of such

principal action. Therefore, the case before the RTC was incapable of pecuniary estimation. Accordingly, John's and LLDC's contention cannot be sustained. And since David paid the docket fees for an action the subject of which was incapable of pecuniary estimation, as computed by the Clerk of Court, the trial court validly acquired jurisdiction over the case.

The aforequoted rationalization is backstopped by long-standing jurisprudence, including one contributed in 1968 by the revered Justice J.B.L. Reyes in *Lapitan v. Scandia, Inc.*:^[10]

xxx [I]n determining whether an action is one the subject matter of which is not capable of pecuniary estimation, this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in instance would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, this Court has considered such actions where the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by courts of first instance. xxx

An action for the determination of the propriety or legality of a particular act is unquestionably one whose subject matter is not capable of pecuniary estimation, notwithstanding that some relief with monetary value is eventually awarded (e.g., in cases of support, or of recovery of the price, or of return of the proceeds), or that some property whose value may be estimated is involved. In *Russell v. Vestil*,^[11] the Court cited actions for "specific performance, support, or foreclosure of mortgage or annulment of judgment, also actions questioning the validity of a mortgage, annulling a deed of sale or conveyance and to recover the price paid, and for rescission, which is a counterpart of specific performance" as illustrative examples of actions whose subject matter is not capable of pecuniary estimation.

In SRC Case No. 021-CEB, the original and amended complaints show that the main objectives were twofold: one, to declare null and void the 600,000 shares issued for less than their real value, and two, to dissolve the corporation. Nowhere in their complaints did David Lu, et al. assert their entitlement to the 600,000 shares, or to the properties affected by the annotation of the notices of lis pendens. The mention of the value of the disputed shares was only to spotlight the inequitable price at which the defendants had effected the transfer. Rightly did the Decision of August 26, 2008 declare that such objectives of SRC Case No. 021-CEB "do not consist in the recovery of a sum of money."^[12]

To suggest at all that David Lu, et al. were seeking to recover specific properties of LLDC through Civil Case No. CEB-25502 was even absolutely fallacious. Under the trust fund doctrine, the capital stock, properties, and other assets of a corporation are regarded as held in trust for the corporate creditors, who, being preferred in the distribution of the corporate assets, must first be paid before any corporate assets may be distributed among the stockholders.^[13] In the event of the dissolution of LLDC, therefore, David Lu, et al. would get only the value of their minority number of shares, not the value of the 600,000 shares. Indeed, a basic concept in corporate law is that a shareholder's interest in corporate property, if it exists at all, is indirect, contingent, remote, conjectural, consequential, and collateral. A share of stock, although representing a proportionate or aliquot interest in the properties of the corporation, does not vest its holder with any legal right or title to any of the properties, such holder's interest in the properties being equitable or beneficial in nature. A shareholder is in no legal sense the owner of corporate properties, which are owned by the corporation as a distinct legal person.^[14]

Neither did the plainly erroneous and irrelevant annotation of the notice of lis pendens in the land records of LLCD's real properties estop David Lu, et al. from insisting that their action was one whose subject matter was not capable of pecuniary estimation. Although the annotation was proper only for an action affecting title to or

right to possession of real properties, it has been an axiom of remedial law that the allegations of the complaint determined the nature of the action. Also, *lis pendens* is a Latin phrase that means, literally, a pending suit. Accordingly, a notice of *lis pendens* is nothing more than a warning to the whole world that anyone who buys the property in *litis* does so at his own risk and subject to the outcome of the litigation; its purpose is to save innocent third persons from any involvement in any future litigation concerning the property.[15]

B

Even if correct amount of filing fees were not paid,
RTC did not thereby automatically lose jurisdiction

It is not disputed that the amount paid by David Lu, et al. was the correct docket fees for an action whose subject matter was not capable of pecuniary estimation.

Nonetheless, even assuming, for the sake of argument, that David Lu, et al. did not pay the correct amount of docket fees at the time of filing the original complaint, as Lu Ym father and sons posited, the RTC did not automatically lose jurisdiction over the complaint.

The prevailing rule is that if the correct amount of docket fees are not paid at the time of filing, the trial court still acquires jurisdiction upon full payment of the fees within a reasonable time as the court may grant, barring prescription.[16] The "prescriptive period" that bars the payment of the docket fees refers to the period in which a specific action must be filed, so that in every case the docket fees must be paid before the lapse of the prescriptive period, as provided in the applicable laws, particularly Chapter 3, Title V, Book III, of the Civil Code, the principal law on prescription of actions.[17]

In *Rivera v. Del Rosario*,[18] the Court, resolving the issue of the failure to pay the correct amount of docket fees due to the inadequate assessment by the Clerk of Court, ruled that jurisdiction over the complaint was still validly acquired upon the full payment of the docket fees assessed by the Clerk of Court. Relying on *Sun Insurance Office, Ltd., (SIOL) v. Asuncion*,[19] the Court opined that the filing of the complaint or appropriate initiatory pleading and the payment of the prescribed docket fees vested a trial court with jurisdiction over the subject matter or nature of the action, and although the docket fees paid were insufficient on account of the amount of the claim, the Clerk of Court of the trial court involved or his duly authorized deputy retained the responsibility of making a deficiency assessment, and the party filing the action could be required to pay the deficiency, without jurisdiction being automatically lost.

Even where the Clerk of Court fails to make a deficiency assessment, and the deficiency is not paid as a result, the trial court nonetheless continues to have jurisdiction over the complaint, unless the party liable is guilty of a fraud in that regard, considering that the deficiency will be collected as a fee in lien within the contemplation of Section 2,[20] Rule 141 (as revised by A.M. No. 00-2-01-SC).[21] The reason is that to penalize the party for the omission of the Clerk of Court is not fair if the party has acted in good faith.

ACCORDINGLY, I vote to reinstate the Decision promulgated on August 26, 2008.

[1] Rollo, G.R. No. 170889, pp. 84-85.

[2] Judge Dicdican of Branch 11 meanwhile inhibited himself, and the case was again re-raffled to Branch 12 of the RTC in Cebu City.

[3] Rollo (G.R. No. 153690), pp. 689-690.

[4] Penned by Associate Justice Antonio Eduardo B. Nachura, and concurred in by Associate Justice Consuelo Ynares-Santiago (retired), Associate Justice Conchita Carpio-Morales, Associate Justice Minita V. Chico-Nazario (retired), and Associate Justice Ruben T. Reyes (retired).

[5] G.R. No. 153690, August 26, 2008, 563 SCRA 254, 274.

[6] G.R. No. 153690, August 4, 2009, 595 SCRA 79.

[7] The majority included Associate Justice Nachura (ponente), Associate Justice Ynares-Santiago, Associate Justice Chico-Nazario, and Associate Justice Presbitero J. Velasco, Jr. The lone dissenter was Associate Justice Carpio Morales.

[8] Note 6, at p. 95.

[9] G.R. No. 153690, August 4, 2009, 595 SCRA 79, 88-89.

[10] No. L-24668, July 31, 1968, 24 SCRA 479. See also *Singsong v. Isabela Sawmill*, G.R. No. L- 27343, February 28, 1979, 88 SCRA 623; *De Galicia v. Mercado*, G.R. No. 146744, March 6, 2006, 484 SCRA 131; *De Leon v. Court of Appeals*, G.R. No. 104796, March 6, 1998, 287 SCRA 94.

[11] G.R. No. 119347, March 17, 1999, 304 SCRA 738.

[12] G.R. No. 153690, August 26, 2008, 563 SCRA 254, 275-276.

[13] *Boman Environmental Development Corporation v. Court of Appeals*, G.R. No. L-77860 November 22, 1988, 167 SCRA 540; citing *Steinberg vs. Velasco*, 52 Phil. 953.

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

[15] *Lim v. Vera Cruz*, G.R. No. 143646, April 4, 2001, 356 SCRA 386.

[16] *Ballatan v. Court of Appeals*, G.R. No. 125683, March 2, 1999, 304 SCRA 34; citing *Tacay v. RTC of Tagum, Davao del Norte*, G.R. No. 88075-77, December 20, 1989, 180 SCRA 433, 444; *Sun Insurance Office, Ltd. (SIOL) v. Asuncion*, G.R. Nos. 79937-38, February 13, 1989, 170 SCRA 274, 285.

[17] *Central Bank of the Philippines v. Court of Appeals*, G.R. No. 88353, May 8, 1992, 208 SCRA 652; *Pantranco North Express, Inc. v. Court of Appeals*, G.R. No. 105180, July 5, 1993, 224 SCRA 477.

[18] G.R. No. 144934, January 15, 2004, 419 SCRA 626, 634-635.

[19] G.R. Nos. 79937-38, February 13, 1989, 170 SCRA 274

[20] Section 2. Fees in lien. - Where the court in its final judgment awards a claim not alleged, or a relief different from, or more than that claimed in the pleading, the party concerned shall pay the additional fees which shall constitute a lien on the judgment in satisfaction of said lien. The clerk of court shall assess and collect the corresponding fees. (n)

[21] Resolution Amending Rule 141 (Legal Fees) of the Rules of Court; effective March 1, 2000.

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