

SECOND DIVISION

[G.R. No. 203527, June 27, 2016]

**SPS. AURELIO HITEROZA AND CYNTHIA HITEROZA,
PETITIONERS, VS. CHARITO S. CRUZADA, PRESIDENT AND
CHAIRMAN, CHRIST'S ACHIEVERS MONTESSORI, INC., AND
CHRIST'S ACHIEVERS MONTESSORI, INC., RESPONDENTS.**

DECISION

BRION, J.:

We resolve the petition for review on *certiorari*^[1] filed by the petitioner spouses Aurelio and Cynthia Hiteroza (*Sps. Hiteroza*) assailing the July 9, 2012 decision^[2] and September 19, 2012 resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 124096.

THE FACTS

Christ's Achievers Montessori Inc. is a non-stock, non-profit corporation that operates a school in San Jose del Monte, Bulacan (hereinafter referred to as the school).^[4] The petitioner Sps. Hiteroza and the respondent Charito Cruzada (*Charito*) are the incorporators, members and trustees of the School, together with Alberto Cruzada, the husband of Charito, and Jaina R. Salangsang (*Jaina*), the mother of Cynthia and Charito.^[5]

On February 25, 2010, the Sps. Hiteroza filed a Complaint^[6] for a derivative suit with prayer for the creation of a management committee, the appointment of a receiver, and a claim for damages against Charito, the President and Chairman of the school.^[7]

The Sps. Hiteroza alleged that Charito employed schemes and acts resulting in dissipation, loss, or wastage of the school's assets that, if left unchecked, would likely cause paralysis of the school operations, amounting to fraud and misrepresentation detrimental and prejudicial to the school's interests.^[8] The particular alleged schemes and acts of Charito that brought about the Sps. Hiteroza's prayer for the creation of a management committee and the appointment of a receiver are as follows:

First, Charito lied about the school's financial status and concealed the school's real income.^[9] The Sps. Hiteroza discovered the discrepancies in the reported number of enrolled students versus the actual number of enrolled students.^[10] The Sps. Hiteroza claimed that the school has missing funds due to Charito's fraud.^[11]

Second, Charito refused the Sps. Hiteroza's request to examine the corporate and financial records of the school, as well as an accounting of the school's receipts and expenses.^[12] Charito also refused to conduct regular and special annual board meetings and the election of officers.^[13]

Third, the school's debt with Unitrust Development Bank secured by the Sps. Hiteroza's three (3) lots and which are now used as the school site, ballooned from P2,000,000.00 to P7,512,492.24 due to the school's late payments or non-payment, contrary to Charito's assurance that the loan was back to P2,000,000.00.^[14]

Fourth, Charito faked the Securities and Exchange Commission (SEC) reportorial requirements when she filed the General Information Sheets for the years 2006 and 2008 and falsely reported that there were annual members' meetings held when there had been none. Charito also filed an Amended Articles of Incorporation using the old signature page of the original Articles of Incorporation, without the Sps. Hiteroza's consent, and forged Cynthia's signature in the school's financial statements.^[15]

Fifth, Charito caused the illegal transfer of Jaina's membership in the school to her son, Jerameel S. Cruzada. The Sps. Hiteroza claimed that the school's bylaws provide that the membership is nontransferable and Jaina could not have transferred her membership since she was already suffering from alzheimer's disease.^[16]

Sixth, Charito and her family's wealth and lifestyle do not correspond with Charito and her husband' earnings of P10,000.00 and P8,000.00 per month respectively, as reflected in the School records.^[17] Charito bought a house and lot at Marilao, Bulacan, with a cost of around P3,000,000.00 and an Isuzu Crosswind Sportivo which cost around P1,200,000.00.

Seventh, Charito used the school premises as her family's personal quarters without paying rent and used the school's funds to pay for their utility bills.^[18]

Charito filed her belated *Answer*^[19] dated April 12, 2010, and argued that the *complaint* is a nuisance and harassment suit.^[20] Charito averred that the Sps. Hiteroza's real motive is to access and secure for themselves the school's income; the Sps. Hiteroza professed their "concern" for the school affairs only after almost ten (10) years.^[21] Charito also averred that her family's house is situated at a low-cost subdivision and their car was obtained through hard work and not through fraud.^[22]

Charito argued that the "serious situation test" in the case of *Pryce Corporation v. China Banking Corporation*^[23] on the appointment of a management committee or a receiver has not been satisfied.^[24] The complaint failed to show that there is a serious and imminent danger of dissipation, loss, wastage, or destruction of assets and paralysis of business operations that may be prejudicial to the minority interest of stockholders, parties-litigants, or to the general public, and that there is a

necessity to preserve the parties-litigants,' investors, and the creditors' rights and interests.^[25]

Charito claimed that the school's improvement negates the accusation of mismanagement.^[26] On the Sps. Hiteroza's right of inspection, Charito claims that a derivative suit is not the proper remedy since the right of inspection is the stockholder's personal right and his cause of action is individual.^[27] Further, the derivative suit requirements have not been complied with since there is no allegation that the Sps. Hiteroza exhausted all available remedies under the school's Articles of Incorporation and By-Laws.^[28] Finally, the complaint has no allegation of earnest efforts towards a compromise, a jurisdictional requirement, considering that the parties are siblings.^[29]

THE RTC RULING

On May 14, 2010, the Regional Trial Court (RTC) rendered a *decision*^[30] (the **May 14, 2010 RTC decision**) directing Charito to allow the Sps. Hiteroza or their duly authorized representative to have access to, inspect, examine, and secure copies of books of accounts and other pertinent records of the school. The RTC recognized that the Sps. Hiteroza, as stockholders, have the right to inspect the school's books and records and/or be furnished with the school's financial statements under Sections 74 and 75 of the Corporation Code of the Philippines.

The RTC, however, held that the allegations in the complaint do not amount to a derivative suit since any injury that may result from the claimed fraudulent acts of Charito will only affect the Sps. Hiteroza and not the school.^[31] The RTC also held that the prayer for the creation of a management committee or the appointment of a receiver was premature since there was yet no evidence in the complaint to support the Sps. Hiteroza's allegations of fraud or misrepresentation.^[32]

The Sps. Hiteroza's inspection of the School's corporate books was conducted on June 14 to 15, 2010.^[33]

On September 21, 2010, the Sps. Hiteroza filed a *Report on the Inspection of Corporate Documents (1st Report)*; they alleged that despite demand, Charito did not produce all the documents for inspection.^[34] With the available documents, the Sps. Hiteroza discovered misuse, wrong declaration and/or wrong recording of funds, as well as missing funds from the coffers of the school amounting to fraud and/or misrepresentation that are detrimental to the school's interests.^[35] The Sps. Hiteroza reiterated their prayer for the creation of a management committee and the appointment of a receiver for the school.^[36]

Charito filed her *Comment* on the *1st Report* and claimed that this report is in the form of a motion for reconsideration which is a prohibited pleading under Rule 15 of the Rules of Court. Charito claims that the appointment of a management committee or a receiver is a provisional remedy and could not be obtained after no appeal was filed and the May 14, 2010 RTC decision lapsed to finality.^[37]

Charito, however, admitted during the hearing before the RTC that not all

documents were presented for the Sps. Hiteroza's inspection.^[38] Hence, the RTC issued an *Order*^[39] directing the inspection of the school's books of account.^[40]

On January 17, 2011, the Sps. Hiteroza filed a *2nd Report on the Inspection of Corporate Documents* and reiterated their prayer for the creation of a management committee and the appointment of a receiver for the school. The Sps. Hiteroza alleged that Charito again refused to produce the school's main bank accounts records. The Sps. Hiteroza also alleged that their accountants found that, based on the declared amounts in the corporate books of accounts, the total unaccounted income of the School for the years 2000 to 2009 amounted to P27,446,989.35.

The RTC issued an *Order* dated March 3, 2011, referring the dispute for mediation at the Philippine Mediation Center, Bulacan Office.^[41] The parties appeared for mediation as directed but no settlement was reached.^[42] The Sps. Hiteroza filed a *Manifestation with Motion* dated November 9, 2011, reiterating their prayer for the appointment of a rehabilitation receiver and/or management committee.^[43]

On March 16, 2012, the RTC issued an *Order (assailed RTC order)* appointing Atty. Rafael Chris F. Teston as the school's receiver in view of the "inability of the parties to work out an amicable settlement of their dispute, and in order to enable the court to ascertain the veracity of the claim of the [spouses Hiteroza] that Charito has unjustifiably failed and refused to comply with the final decision in this case dated May 14, 2010."^[44]

Charito sought to nullify the assailed RTC order and filed a *Petition for Certiorari* dated April 3, 2012, with application for the issuance of a temporary restraining order and/or writ of preliminary injunction before the CA.^[45] The Sps. Hiteroza argued that the RTC gravely abused its discretion in issuing the assailed RTC order on the appointment of a receiver since it was issued despite the absence of the following: (1) a verified application, (2) any ground enumerated under Section 1 of Rule 9 of the Interim Rules of Procedure for Intra-Corporate Controversies (A.M. No. 01-2-04-SC) (hereinafter referred to as the "Interim Rules"), or any "serious situation" as required by the Court in the *Pryce Corporation* case.^[46] The Sps. Hiteroza also argued that the assailed RTC Order contradicted the final May 14, 2010 RTC decision denying the prayer for receivership or the creation of a management committee.^[47]

THE CA RULING

In its decision^[48] dated July 9, 2012, the CA granted Charito's petition and nullified the assailed RTC order on the appointment of a receiver.

The CA explained that the May 14, 2010 RTC decision already denied the Sps. Hiteroza's prayer for the creation of a management committee or the appointment of a receiver for lack of evidence and for being premature.^[49] The May 14, 2010 RTC decision eventually became final and executory since no appeal was filed.^[50]

The CA held that the RTC gravely abused its powers in reconsidering its final decision on the basis of the Sps. Hiteroza's reports on the inspection of the school

records.^[51] The CA noted that the Sps. Hiteroza's reports, which reiterated their prayer for the creation of a management committee and the appointment of a receiver, are veiled attempts to move for the reconsideration of the RTC decision; a motion for reconsideration is a prohibited pleading under Section 8(3),^[52] Rule 1 of the Interim Rules.^[53]

The CA also held that there was noncompliance with the requisites for the appointment of a receiver under Section 1, Rule 9 of the Interim Rules.^[54] The CA declared that the allegations on the school's dissipation of assets and funds have yet to be proven and that the RTC was still in the process of ascertaining the veracity of the Sps. Hiteroza's claims.^[55] Further, there is no showing that the school is in imminent danger of paralysation of its business operations.^[56]

The Sps. Hiteroza filed a motion for reconsideration of the CA decision, but the CA denied the motion for lack of merit.^[57]

THE PETITION

The Sps. Hiteroza filed the present petition for review on *certiorari* to challenge the CA ruling.

The Sps. Hiteroza argue that the CA ruling is erroneous since it considers the May 14, 2010 RTC decision as a final judgment when, in fact, the RTC decision is preliminary as it merely grants a remedy by way of a mode of discovery,^[58] i.e., the inspection of corporate documents, books, and records. The May 14, 2010 RTC decision merely granted one of the reliefs asked for by the Sps. Hiteroza, but by itself, does not address all of the Sps. Hiteroza's causes of action in their complaint.^[59] More importantly, Charito has not fully complied with the May 14, 2010 RTC decision since Charito refused to open the School's other corporate books and records for inspection.^[60]

The Sps. Hiteroza also argue that the reports have extensively shown that there was dissipation of the school's assets and funds and that the school is heavily indebted to the bank, thus warranting the appointment of a receiver.^[61]

THE ISSUES

The issues of the petition are: (1) whether the May 14, 2010 RTC Decision is a final judgment; and (2) whether the CA correctly nullified the assailed RTC Order which directed the appointment of a receiver.

OUR RULING

We ***partially grant*** the petition.

The May 14, 2010 RTC decision is not a final judgment since the case is not ripe for decision. No pre-trial has been conducted pursuant to the Interim Rules and the parties have not submitted their pre-trial briefs.

Section 4, Rule 4 of the Interim Rules provides that a judgment before pre-trial, as