Republic of the Philippines
Securities and Exchange Commission
SEC Bldg. EDSA, Greenhills, Mandaluyong City

In the Matter of the Correction of the Articles of Incorporation of

FORTUNEGATE HOLIDAY PHILIPPINES, INC.
Petitioner-Appellant.

SEC En Banc Case No. 08-10-210

For: Appeal to the Commission En Banc

x--x

DECISION

This refers to the appeal of Fortunegate Holiday Philippines, Inc. from the Company Registration and Monitoring Department's (CRMD) 29 July 2010 Order denying the corporation's petition for correction of its Articles of Incorporation.

The corporation alleges that the Eighth and Ninth Articles of its Articles of Incorporation erroneously state that Paulo Ho was one of the stockholders holding Class B Preferred Shares. The corporation explains that the erroneous inclusion of Paulo Ho was due to the inadvertence of its lawyer who drafted the Articles. And, truth is that Alberto To was the one who subscribed to the shares of stock that were erroneously registered in Paulo Ho's name.

The corporation thus petitioned the CRMD to allow the correction of the Articles by substituting the name of Alberto To in place of Paulo Ho. In support of its petition, the corporation submitted: (1) Affidavit dated 21 May 2010 of the nominee stockholders stating that Alberto To was their principal; (2) Alberto To's Affidavit stating that he subscribed to 21,000 shares including the 20,995 Class B Preferred shares registered in Paulo Ho's name; and (3) a Certification from the corporation's secretary stating that it was Alberto To who subscribed to the 20,995 Class B Preferred shares.

On 23 June 2010, the corporation received from the CRMD a Subpoena directing the corporation to submit an Affidavit by Paulo Ho verifying the alleged mistake in the Articles.

However, the corporation failed to comply with the Subpoena. The corporation was only able to submit its General Information Sheet and a certified true copy of its stock and transfer book as further evidence in support of its allegation that Alberto To was indeed the owner of the 20,995 Class B Preferred shares. Finding the corporation's submission insufficient to prove the alleged error, the CRMD issued the assailed 29 July 2010 Order denying the petition for correction.

The appeal has no merit. We find no error with the CRMD's Order.

We agree with the CRMD that the various documents submitted by the corporation in support of its petition are still insufficient to overcome what is expressly stated in the assailed Articles. Alberto To's Affidavit is obviously self-serving, and cannot be given much credence. Also, the incorporator's Affidavit cannot be given much probative value since it is in the nature of a retraction of the contents of the Articles of Incorporation, which they earlier executed, and acknowledged before a notary public as their free and voluntary act.

Further, the corporate secretary's certificate, the General Information Sheet, the stock and transfer Book, and other such corporate records are not conclusive but are *prima facie* evidence only,[1] and certainly cannot prevail over the corporation's charter – the Articles of Incorporation. This doctrine is well settled, and was in fact applied by the Supreme Court in the case of *Lanuza v. Court of Appeals,*[2] where the Court ruled that the Articles of Incorporation prevails over the company's stock and transfer book and other such corporate records in determining the stockholders' shareholdings.

The fundamental quality of the Articles of Incorporation cannot be gainsaid. The Articles of Incorporation defines the charter of the corporation and the contractual relationships between the State and the corporation, the stockholders and the State, and between the corporation and its stockholders. The contents of the Articles of Incorporation are binding, not only on the corporation, but also on its shareholders. Such is the importance of the Articles of Incorporation that its correction should not be taken lightly.

This is especially true in the present case where the corporation's petition is not merely for the correction of a manifestly clerical or innocuous error. The desired change in the Articles will affect substantial rights, particularly that of subscription/ownership over the shares. To change the entry in the Articles from Paulo Ho to Alberto To results in change in ownership of property. Thus, the Commission must exercise extreme caution in granting such petitions lest it results in undue deprivation of property.

---

[1] *Bitong v. Court of Appeals, 354 Phil. 516, 536 (1998).*

[2] GR No. 131394, 28 March 2005.

In cases resulting in deprivation of property, the Constitution requires that the person affected be given due process of law, i.e. notice and hearing. The CRMD sought to satisfy this constitutional requirement by directing the corporation to present an affidavit from Paulo Ho regarding the supposed error in the Articles. However, the corporation failed to satisfy this requirement. Absent positive proof that Paulo Ho was afforded notice and hearing, the Commission cannot allow the desired correction of the Articles without potentially infringing on his property rights.

However, we note the corporation's statement that it is continuously searching for Paulo Ho, and it undertakes to submit his Affidavit as soon as he is contacted.

WHEREFORE, premises considered, the Appeal is hereby **DENIED** for lack of merit. This is without prejudice to petitioner-appellant initiating another petition for correction of its Articles at a future time when it is able to secure Paulo Ho's Affidavit.

SO ORDERED.

Mandaluyong City, Philippines, 26 August 2010.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner