Republic of the Philippines
Department of Finance
Securities and Exchange Commission
COMMISSION EN BANC

J PLUS ASIA DEVELOPMENT CORPORATION,
Appellant,

SEC En Banc Case No. 07-13-297

-versus-

ENFORCEMENT AND PROSECUTION DEPARTMENT, FIL-ESTATE PROPERTIES, INC. and GLOBAL–ESTATE RESORTS, INC.,
Appellees.

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DECISION

This resolves the *Memorandum of Appeal*[1] (the "Appeal") filed on July 29, 2013 by J Plus Asia Development Corporation ("Appellant") assailing the *Order* dated July 10, 2013 ("*Assailed Order*")[2] of the Enforcement and Prosecution Department[3] ("EPD"), the dispositive portion of which reads as follows:

> "From the foregoing, the complaint/petition for the issuance of a Cease and Desist Order filed by J Plus Asia Development Corporation (J Plus) against Global Estate Resorts, Inc. (GERI), Fil-Estate Properties, Inc. (FEPI) and Fairways and Blue Water Resort Golf and Country Club, Inc. (FBRGCCI) is hereby **DENIED** for lack of jurisdiction. On the alleged acts of FEPI and GERI which are contrary to the Registration Statement of Fairways and Blue Water Resort Golf and Country Club, Inc. (FBRGCCI), the issue was referred to the Corporation Finance Department of the Commission for its appropriate action."

THE PARTIES

Appellant is a stock corporation duly organized and existing under Philippine laws, having been issued a Certificate of Incorporation with SEC

[1] Notice of Appeal and Memorandum on Appeal dated July 25, 2013.
[2] "Annex A" of Memorandum on Appeal.
[3] Now the Enforcement and Investor Protection Department.

Registration No. CS200706497 on May 2, 2007. Its business address[4] is at Manila Luxury Condominium, Pearl Drive, Pasig City.

Appellee Fil-Estate Properties, Inc. ("FEPI") is a stock corporation duly organized and existing under Philippine laws, having been issued a Certificate of Incorporation, with SEC Registration No.0000173536 registered on February 13, 1990. Its principal office address[5] is at 16/F Alliance Global Tower, 36th Street corner 11th Avenue, Uptown Bonifacio, Taguig City. As a disclosure, FEPI is a subsidiary of GERI[6].

Appellee Global Estate Resorts, Inc. ("GERI") is a stock corporation duly organized and existing under Philippine laws, having been issued a Certificate of Incorporation, with SEC Registration No. AS94004462 on May 18, 1994. Its principal office address[7] is at 16/F Alliance Global Tower, 36th Street corner 11th Avenue, Uptown Bonifacio, Taguig City.

Fairways and Blue Water Resort Golf and Country Club, Inc. ("FBRGCCI") is a stock corporation duly organized and existing under Philippine laws, having been issued a Certificate of Incorporation with SEC Registration No. AS96003418 on March 26, 1996. Its principal office address[8] is at Boracay Newcoast, Island of Boracay, Malay, Aklan. As a disclosure, FEPI is a subsidiary of GERI[9].

Appellee EPD, now the Enforcement and Investor Protection Department, is one of the operating departments of the Commission tasked to ensure compliance by all market participants, issuers and persons with the laws, rules and regulations implemented by the Commission, to investigate, *motu proprio,* or upon a verified complaint or referral, and to take appropriate enforcement action for any violation thereof. It is vested with the primary authority to conduct investigations and administrative actions involving, among others, the selling, offering or transacting of unregistered securities without a secondary license, as well as to initiate petitions for revocation of certificate of registration based on grounds within its jurisdiction.

[4] General Information Sheet (GIS) received on March 22, 2016.
[5] General Information Sheet (GIS) received on September 2, 2019.
[6] Ibid.
[7] General Information Sheet (GIS) received on June 28, 2019.
[8] General Information Sheet (GIS) received on September 10, 2019.
[9] Ibid.

RELEVANT FACTS

FEPI and GERI are the developer and substantial shareowner, respectively, of Fairways and Bluewater Resort Golf and Country Club, Inc. (the "Resort") which operates in Boracay Island, Aklan, and is authorized to sell 25,920 proprietary time shares to the public. Pursuant to the Registration Statement made effective by the Commission, the Resort's members are to enjoy the open, free use and enjoyment of the facilities and amenities in a purely private, excusive, low density and family-oriented environment.

On 24 January 2008, Appellee FEPI and Appellant entered into a joint venture for the full completion, expansion and development of the seventy-two (72) unit Villa Beatriz Condotel (the "Project") located within the Resort, and executed a Project Agreement (the "Agreement") for this purpose. Under the Agreement, FEPI agreed to contribute the 2,000 sq.m. titled property and the minimal civil works existing thereon. FEPI also undertook, among others, to provide and allow Appellant the free and unhampered use if its road network and access to and from the Resort; grant unit owners or foreign users a free, full and unhampered access to and use of the golf and country club and beach amenities, the infrastructure and road networks of the Resort. Appellant, on the other hand, agreed to finance, expand and complete the Project under the agreed sharing arrangement[10].

Sometime in June 2011, Appellant turned over to FEPI thirty (30) units of the Project pursuant to the agreed sharing arrangement, after the completion of the Project. Soon thereafter, Appellant alleged that FEPI and GERI started to harass it and its prospective unit buyers by depriving them access to the Project facility.

Consequently, Appellant filed on 6 November 2012 a Complaint against Appellees FEPI and GERI, praying for the issuance of a Cease and Desist Order against the latter in relation to their various on-going residential and commercial subdivision and high-rise condominium projects within the 120-hectare property of the Resort.

In their Answer *ad Cautelam*, Appellees FEPI and GERI prayed for the dismissal of the Complaint on the following grounds: (i) the Commission has no jurisdiction over the subject matter of the case since the allegations in the Complaint relates to alleged violations of the Agreement; (ii) Appellant's

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[10] J Plus to get 42 units of the Project (60%) and FEPI to get 30 units of the Project (40%)

allegations are immaterial and irrelevant to the cause of action; and (iii) Appellant is not a real party in interest as it could not be adversely affected by the alleged failure, if any, of Appellees FEPI and GERI to conform to the Resort's Registration Statement filed with the Commission.

In the Assailed Order, the EPD justified the dismissal of the Complaint for want of jurisdiction on the basis of the finding that Appellant's cause of action is based on contract. The EPD also found that the Project Agreement is a construction agreement, and disputes over the same are within the jurisdiction of the Construction Industry Arbitration Commission pursuant to Paragraph 11.3 thereof.[11]

In its Appeal, Appellant maintained that the EPD erred in dismissing the Complaint alleging that the Commission has jurisdiction over the case since the Resort has been previously registered with the Commission as a golf and resort time-share project. Appellant posited that EPD is duty-bound to issue a CDO enjoining the unilateral deviation from the project if the same will operate as a fraud on the investing public.

On August 14, 2013, EPD filed its Comment where it reiterated its position in the Assailed Order based on its findings.

On 16 August 2013, Appellees FEPI and GERI filed their Reply *Ad Cautelam* praying for the dismissal of the Appeal on the ground that the allegations in the Complaint are not supported by evidence.

On 19 August 2015, Appellant and Appellees FEPI and GERI filed a Joint Manifestation (with Motion to Withdraw and Consider the Case Closed and Terminated) [the "Joint Manifestation and Motion to Withdraw"] where they agreed to mutually and irrevocably release each other from any and all matters relating to and arising from the instant case. The parties prayed, among others, for the issuance of an Order directing the cancellation and lifting of all notices of *lis pendens*, adverse claim and *consulta* on the titles registered in their respective names.

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[11] See Page 4 of the Order

ISSUE

Whether the Joint Manifestation and Motion to Withdraw is sufficient for purposes of dismissing the Appeal.

RULING

In the Joint Manifestation and Motion to Withdraw, the parties expressly agreed to amicably settle their differences by mutually and irrevocably releasing each other from any and all claims and liabilities that they have, or may have against each other, to wit:

> "2. The Parties hereby mutually and irrevocably waive, release, quitclaim and extinguish any and all causes, demands, claims, and liabilities which they have, or might have, against the other party, including their respective parent, subsidiaries, affiliates, and their respective officers, employees, agents, representatives, stockholders, attorneys, heirs, assigns, and successors-in-interest, related to, arising from, or in connection with the above-mentioned case. The Parties' intention herein is to give n absolute, irrevocable and mutual release to one another.
>
> 3. Furthermore, the Parties shall desist from further pursuing the abovementioned case or any action similar to or arising from the same case or incidents subject hereof, or relating thereto, or arising from the pleadings or papers filed in relation to the case and/or proceedings."

At the outset, it should be emphasized that the Commission is authorized to consider and exhaust all possible means to help parties arrive at a settlement; and the withdrawal of cases/actions filed with the Commission on the basis of a settlement voluntarily made by the parties is expressly recognized in Rule V, Section 5.2 of the 2006 Rules of Procedure (the "Rules"), to wit:

> "Sec. 5-2. Amicable Settlement. - During the conference, the Hearing Panel or Officer <u>shall ensure</u> that the parties exhaust all available means to arrive at a fair and reasonable settlement of the case. The parties, with or without the assistance of counsel, <u>shall submit</u> during the conference specific proposals or counter-proposals to arrive at the amicable settlement of the case.
>
> Amicable settlement <u>shall be encouraged at any stage of the proceedings</u> xxx." (Emphasis supplied)

The Joint Manifestation and Motion to Withdraw is thus consistent with the afore-quoted provision of the Rules, and satisfied the objective thereof.

Art. 2028 of the Civil Code sets out the nature of a compromise as a contract, to wit:

> "A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced."

In relation to the foregoing, Article 1306 of the Civil Code provides the requirements for a contract to be valid, while Rule V, Section 5-2 of the Rules sets out the requirements for a valid settlement with the Commission, to wit:

> "Art. 1306, Civil Code. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are <u>not contrary to law, morals, good customs, public order, or public policy</u>."
>
> "Rule V Sec. 5-2 of the 2006 Rules of Procedure: xx Amicable settlement shall be encouraged at any stage of the proceedings, provided it is <u>not prejudicial to the public interest or third parties, or contrary to law, rules or regulations of the Commission, or against good morals or public policy</u>." (Emphasis supplied)

After a review of the Joint Manifestation and Motion to Withdraw, specifically in relation to the terms of the compromise agreement which relates to the mutual release by the parties and waiver of their respective claims against each other in respect of the matters subject of the instant case, the Commission hereby grants the same after a finding that the same is valid for not being contrary to law, rules or regulations of the Commission; morals, good customs and public policy, and for not being prejudicial to the public interest or third parties.

Being a valid contract, the terms of the compromise is thus binding upon the parties and has the force of law between them.[12]

Article 2037 of the Civil Code provides:

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[12] A compromise, <u>upon its perfection</u>, becomes binding upon the parties and has the effect of res judicata <u>even if not judicially approved</u>. (Ynson v. CA, GR 117018-19 & 117327, 17 June 1996; Republic v. Sandiganbayan, 226 SCRA 314, 320, 1993)

> "A compromise has upon the parties the effect and authority of *res judicata*; but there shall be no execution except in compliance with a judicial compromise."

Given the binding nature of a valid compromise, it behooves upon this Commission to recognize the Joint Manifestation and Motion to Withdraw and to give its administrative *imprimatur* on the same.

In *Soney v. Anchor Savings Bank*[13], the Court emphasized the effect of the approval of the compromise agreement on the pending case, to wit:

> "Verily, it is a settled rule that a compromise agreement, once approved by final order of the court, has the force of res judicata between the parties and should not be disturbed except for vices of consent or forgery. Hence, a decision on a compromise agreement is final and executory and it has the force of law and is conclusive between the parties. It transcends its identity as a mere contract binding only upon the parties thereto as it becomes a judgment that is subject to execution in accordance with the Rules of Court." (Emphasis supplied)

Moreover, the Joint Manifestation and Motion to Withdraw has in effect rendered the issues presented in the Complaint and the Appeal moot and academic as the justiciable controversy which was originally present has ceased to exist so that any determination that the Commission will make on same will have no practical use or value.[14] Hence, the appeal must be dismissed.

Finally, in relation to the relief sought by the parties relating to the issuance of an Order directing the cancellation and lifting of all notices of *lis pendens*, adverse claim and *consulta* on the titles registered in their respective names, the same cannot be given due course as the same is outside the jurisdiction of the Commission.

The annotation of an adverse claim may be cancelled in two (2) ways i.e. (1) after 30 days from annotation, by filing of a verified petition before the Register of Deeds by the party in interest; and (2) before the lapse of 30 days, by filing of a petition in court by the party in interest. Hence, the authority to cancel belongs to the party in interest.[15] On the other hand, the annotation of

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[13] G.R. No. 205623, August 10, 2016

[14] Gancho-on v. Secretary of Labor and Employment, G.R. No. 108033, [April 14, 1997]

[15] Sec. 70, PD 1529 – "xx The adverse claim shall be effective for a period of 30 days from the date of registration. After the lapse of said period, the annotation of adverse claim may be cancelled upon filing of a

a pending consulta may be cancelled in two (2) ways i.e. (1) when the matter referred en consulta to the Commissioner of Land Registration has been resolved, the Register of Deeds shall *motu proprio* cancel the same; and (2) before resolution, it may be cancelled by the petitioner himself. Hence, the authority to cancel rests with either the Register of Deeds or the petitioner.[16]

In a similar manner, since a notice of *lis pendens* may only be annotated when there is a pending litigation in court, it becomes immediately clear that the Commission has no jurisdiction over the same. Moreover, the same may also only be cancelled in two (2) ways i.e. (1) by the court where the case is pending; and (2) by the Register of Deeds upon filing of verified petition by the party who caused the registration.[17]

In *Lim v. Vera Cruz*[18], the Supreme Court discussed the purpose and the requirements to effect annotation of a notice of *lis pendens*, to wit:

> "*Lis pendens* has been conceived to protect the real rights of the party causing the registration thereof. With the *lis pendens* duly recorded, he could rest secure that he would not lose the property or any part of it. For such notice serves as a warning to a prospective purchaser or incumbrancer that the particular property is in litigation; and that he should keep his hands off the same unless of course, he intends to gamble on the results of the litigation. Based on this principle as well as the express provisions of Sec. 14, Rule 13 of the 1997 Rules of Civil Procedure, as amended, only the particular property subject of litigation is covered by the notice of *lis pendens*.

More importantly, Sec. 14, Rule 13 of the 1997 Rules of Civil Procedure[19], as amended, specifically provides that a notice of *lis pendens* can only be cancelled only upon order of a court, thus:

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verified petition therefor by the party in interest; xxx Before the lapse of thirty days aforesaid, any party in interest may file a petition in the Court of First Instance where the land is situated for the cancellation of the adverse claim. xxx"

[16] Sec. 117, PD 1529 – "The Register of Deeds shall make a memorandum of the pending consulta on the certificate of title which shall be cancelled motu proprio by the Register of Deeds after final resolution or decision thereof, or before resolution if withdrawn by petitioner."

[17] Sec. 76, PD 1529 – "No action to recover possession of real estate, or to quiet title thereto, or to remove clouds upon the title thereof, or for partition, or other proceedings of any kind in court directly affecting the title to land or the use or occupation thereof or the buildings thereon, and no judgment, and no proceeding to vacate or reverse any judgment, shall have any effect upon registered land as against persons other than the parties thereto, unless a memorandum or notice stating the institution of such action or proceeding and the court wherein the same is pending, as well as the date of the institution thereof, together with a reference to the number of the certificate of title, and an adequate description of the land affected and the registered owner thereof, shall have been filed and registered."

[18] G.R. No. 143646. April 4, 2001

[19] Note that Sec. 77 of Presidential Decree No. 1529 also provides that notice of lis pendens may only be cancelled upon order of the court, thus:

> "SECTION 14. Notice of *lis pendens* — In an action affecting the title or the right of possession of real property, the plaintiff and the defendant, when affirmative relief is claimed in his answer, may record in the office of the registry of deeds of the province in which the property is situated a notice of the pendency of the action. Said notice shall contain the names of the parties and the object of the action or defense, and a description of the property in that province affected thereby. Only from the time of filing of such notice for record shall a purchaser, or encumbrancer of the property affected thereby, be deemed to have constructive notice of the pendency of the action, and only of its pendency against the parties designated by their real names.
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> The notice of *lis pendens* hereinabove mentioned may be cancelled only upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded." (Emphasis ours)

On the basis thereof, the Commission is clearly without jurisdiction and authority to order the cancellation of the notice of *lis pendens* on the properties of the parties in this case.

WHEREFORE, premises considered, the Appeal is hereby DISMISSED for being moot and academic. The Compromise Agreement embodied in the Joint Manifestation and Motion to Withdraw is hereby **GRANTED** and the instant case is hereby considered CLOSED and TERMINATED.

Let the Enforcement and Protection Department be furnished a copy of this Decision for its information.

SO ORDERED.

Pasay City, Philippines; 27 October 2020.

"SECTION 77. Cancellation of lis pendens — Before final judgment, a notice of lis pendens may be cancelled upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be registered. It may also be cancelled by the Register of Deeds upon verified petition of the party who caused registration thereof."

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EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner