Republic of the Philippines
Department of Finance
Securities and Exchange Commission

ATTY. JASON BARLIS, MA. ANA GARCIA and IRENE MARIE V. ROMERO,
Appellants,

- versus -

SEC En Banc Case No. 06-12-260
FOR: Cancellation of the Second Stock and Transfer Book

PINES COMMERCIAL CORP., as represented by TERESITA S. LEE,
Appellee.

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DECISION

Before the Commission *En Banc* is the Memorandum on Appeal[1] filed on 13 June 2012 by appellants Atty. Jason Barlis, Ma. Ana Garcia and Irene Marie V. Romero (Barlis group) assailing the *Order* (Assailed Order) of the Company Registration and Monitoring Department (CRMD) of the Commission dated 27 April 2012, the dispositive portion of which states as follows:

> "WHEREFORE, premises considered and in view of the fact that the original stock and transfer book of Pines Commercial Corporation is intact and existing, the herein Petition is **GRANTED**. The registration of the Second Stock and Transfer Book of Pines Commercial Corporation as registered by the respondents on 12 March 2007 is **NULLIFIED** and **CANCELLED**. The Original Stock and Transfer Book, registered on 11 May 1978, which is in the possession of the Petitioner is hereby deemed the one officially registered with the Commission."

Factual Antecedents:

Pines Commercial Corp. (PINES) is a domestic corporation registered with the Commission on 11 April 1978[2] by the Syjuco family.[3] Records on file show that its Stock and Transfer Book (First STB) was registered by the Commission on 11 May 1978.[4] On the other hand, the Barlis group claims to be the elected, legitimate members of the board of directors and corporate officers of PINES.[5]

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[1] Memorandum on Appeal dated 24 May 2012.

[2] Per corporate filings with the Commission, PINES registered on 11 April 1978 with the Commission under SEC Registration No. 79066.

[3] The incorporators of PINES are as follows: Augusto G. Syjuco, Jose G. Syjuco, Virginia S. Syjuco, Jose A. Syjuco, and Jose P. Crespo (Memorandum on Appeal, Annex "E" [Memorandum of PINES dated 31 January 2012, par. 2]).

[4] Memorandum on Appeal, Annex "B" (Order of CRMD dated 27 April 2012, p. 1).

[5] *Id.*, p. 5.

PINES alleges that, sometime in 1978, the late Conrado Romero and his common law wife, Ms. Lee, purchased all the shares of stock from the Syjuco family making them the absolute owners of the company. By virtue of the aforesaid sale, all the documents, including the First STB, were transferred to Milagros Lee who is the sister of Teresita S. Lee. Thereafter, on 10 May 1978, the First STB was registered with the Commission by PINES.[6]

On 11 August 2003, the Commission revoked the Certificate of Incorporation of PINES pursuant to SEC Order dated 8 July 2003 for failure to comply with the reportorial requirements.[7]

On 17 January 2006, Conrado Romero died and a certain Lui Man Chong, claiming to be his nephew and sole heir, adjudicated unto himself all the shares of the former. Thereafter, Lui Man Chong assigned his shares to his son Lui Yick Fong, Atty. Rigoberto Gallardo, Atty. Jason Barlis, Della Romero and Ariana Santos, who are all from the Barlis group.[8]

On 2 February 2006, PINES, through Teresita S. Lee, filed a *Petition to Lift Order of Revocation* and paid the penalty for its non-compliance with the annual reports. On 3 February 2006, the Commission issued an Order setting aside the revocation order of its primary license.[9]

On 22 December 2006, Teresita S. Lee, Eduardo Lee, Aida Lee Esguerra, Milagros Lee and Maria Imelda Lee Santiago (Lee group) filed a *Complaint* for annulment of document, injunction, recovery of possession, accounting and damages against the Barlis group before the Regional Trial Court (RTC) of Baguio City in Civil Case No. 6415-R.[10]

During the hearing on the application by the Lee group for the issuance of a Writ of Preliminary Injunction, the First STB was submitted to the RTC. However, it was discovered during the hearing that the Barlis group registered another stock and transfer book (Second STB) before the Commission on 12 March 2007.[11] The reason for the registration of the Second STB was that the online database of the Commission has not captured nor reflected the fact of registration of the First STB in the system. Thus, the SEC Officer who received the application for the Second STB presumed there was no STB registered at the time.[12]

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[6] *Id.*, Annex "C" (Petition of PINES dated 11 June 2011, par. 2) and Annex "E" (Memorandum of Pines dated 31 January 2012, par. 2).
[7] *Id.*, Annex "E" (Memorandum of Pines dated 31 January 2012, par. 4).
[8] *Id.*, Annex "E" (Memorandum of Pines dated 31 January 2012, par. 5).
[9] *Id.*, Annex "E" (Memorandum of Pines dated 31 January 2012, par. 4).
[10] *Id.*, Annex "E" (Memorandum of Pines dated 31 January 2012, par. 6).
[11] *Id.*, Annex "E" (Memorandum of Pines dated 31 January 2012, par. 7).
[12] Id., Annex "B" (Order of CRMD dated 27 April 2012, p. 8).

On 19 July 2010, the RTC granted the issuance of the Writ of Preliminary Injunction ordering the Barlis group to cease and desist from acting as directors and/or officers of the PINES. However, the Court of Appeals, in a *Decision* dated 15 April 2011, lifted and dissolved the Writ of Preliminary Injunction.[13]

As a result of the Second STB registered by the Barlis group, Teresita Lee, who claims to represent PINES pursuant to the alleged authority issued by the Board of Directors of the company, filed on 30 June 2011 a *Petition*[14] for the cancellation of the Second STB before the CRMD. The Barlis group then filed a *Comment/Opposition* dated 24 August 2011 praying that the *Petition* be dismissed. The Lee group and the Barlis group, thereafter, filed their responsive pleadings.[15]

In its *Order* dated 8 November 2011, the RTC of Baguio City in Civil Case No. 6415-R, dismissed the case since Lui Man Chong has not been impleaded in the case considering he is an indispensable party. The RTC further stated that the Teresita Lee has no authority to file the case, and that the Lee group failed to state a cause of action in their Complaint.[16] On appeal, the Court of Appeals, in its *Resolution* dated 12 January 2012,[17] dismissed the Petition for Review filed by PINES.

On 27 April 2012, the CRMD, in the *Assailed Order,* granted the Petition and cancelled the registration of the Second STB. The CRMD stated that the First STB is deemed the one officially registered with the Commission based on the principle of *prius tempore, potior jure* (first in time, stronger in right) in the registration of STB.[18] Hence, this instant appeal.[19]

In the *Memorandum on Appeal*, the Barlis group argues the following: (i) the Lee group has no authority to represent PINES in the case; (ii) the CRMD erred when it did not dismiss the case since not all indispensable parties are impleaded in the case; (iii) the CRMD, as a matter of judicial courtesy, should not determine the validity of the Second STB, which is evidence used in Civil Case No. 6415-R and in *custodial legis*; and (iv) the First STB should be cancelled since it is possession of the Lee group who do not have a right in the corporation.[20]

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[13] *Id.*, Annex "F" (Position Paper dated 13 February 2012 filed by the Barlis group, p. 5-6).
[14] *Id.*, Annex "C" (Petition of PINES dated 11 June 2011).
[15] *Id.*, Annex "E" (Memorandum of Pines dated 31 January 2012) and Annex "F" (Position Paper dated 13 February 2012 filed by the Barlis group).
[16] *Id.*, Annex "F" (Position Paper dated 13 February 2012 filed by the Barlis group, Annex "7" [Order of the RTC dated 8 November 2011, pp. 11 and 14]).
[17] *Id.*, Annex "F" (Position Paper dated 13 February 2012 filed by the Barlis group, Annex "7" [Order of the RTC dated 8 November 2011, pp. 11 and 14]).
[18] *Id.*, Annex "B" (Order of CRMD dated 27 April 2012, p. 10).
[19] *Id.*, Annex "B" (Order of CRMD dated 27 April 2012).
[20] Memorandum on Appeal, pp. 9, 13, 16-19.

In response, PINES, as represented by Teresita S. Lee, filed its *Reply Memorandum* arguing the following: (i) Teresita S. Lee is the real party-in-interest to seek the cancellation of the Second STB; (ii) the argument that all proceedings are null and void as indispensable parties were not impleaded is "too flimsy"; and (iii) the claim of the Barlis group that the First STB should be cancelled is baseless.[21]

Issues:

The issues to be resolved are the following: (i) whether the case should be dismissed since the same was commenced by persons who are considered not real parties-in-interest; (ii) whether the case should be dismissed since indispensable parties were not properly impleaded in this case; (iii) whether the CRMD erred in ordering the cancellation of the Second STB since the same is in *custodia legis*; and (iv) whether the First STB should be cancelled because it is in possession of the Lee group who does not have any authority to act for PINES.

Ruling:

We shall take up the first and second issues in seriatim. As to the *first issue*, the Barlis group argues that the case is not prosecuted by the real parties-in-interest considering that Teresita S. Lee has no authority to represent the PINES. As to the *second issue*, the Barlis group claims that not all indispensable parties were impleaded in this case, since the former claims that only Atty. Jason Barlis, Ms. Ana Garcia and Ms. Irene Marie Romeo were made to comment but Atty. Rigoberto Gallardo and the other directors of PINES as well as the other majority of the stockholders were not included.[22]

However, even if Teresita S. Lee is not a real party in interest and not all indispensable parties were impleaded, the dismissal of the case is not warranted since, as correctly pointed out by the CRMD, the Commission can still take cognizance of the case based on its regulatory power. The Supreme Court, in the case entitled *Provident International Resources Corporation v. Venus*, et al.,[23] discussed the regulatory powers of the Commission as follows:

> "**From [Section 5 of the Securities Regulation Code (Republic Act No. 8799)][24], it can be said that the SEC's regulatory authority over private**

[21] Reply Memorandum dated 12 July 2012 and filed on 13 July 2012, pp. 5, 7, and 10.
[22] Memorandum on Appeal, pp. 18 and 22.
[23] G.R. No. 167041, 17 June 2008.
[24] Sec. 5. *Powers and Functions of the Commission*.- 5.1. The Commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902-A, the Corporation Code, ... Pursuant thereto the Commission shall have, among others, the following powers and functions:

corporations encompasses a wide margin of areas, touching nearly all of a corporation's concerns. This authority more vividly springs from the fact that a corporation owes its existence to the concession of its corporate franchise from the state. Under its regulatory responsibilities, the SEC may pass upon applications for, or may suspend or revoke (after due notice and hearing), certificates of registration of corporations, partnerships and associations (excluding cooperatives, homeowners' association, and labor unions); compel legal and regulatory compliances; conduct inspections; and impose fines or other penalties for violations of the Revised Securities Act, as well as implementing rules and directives of the SEC, such as may be warranted.

Considering that the SEC, after due notice and hearing, has the regulatory power to revoke the corporate franchise -- from which a corporation owes its legal existence -- **the SEC must likewise have the lesser power of merely recalling and canceling a [stock and transfer book] that was *erroneously registered.***

Going to the particular facts of the instant case, we find that the SEC has the primary competence and means to determine and verify whether the subject 1979 STB presented by the incumbent assistant corporate secretary was indeed authentic, and duly registered by the SEC as early as September 1979. As the administrative agency responsible for the registration and monitoring of STBs, it is the body cognizant of the STB registration procedures, and in possession of the pertinent files, records and specimen signatures of authorized officers relating to the registration of STBs. The evaluation of whether a STB was authorized by the SEC primarily requires an examination of the STB itself and the SEC files. This function necessarily belongs to the SEC as part of its regulatory jurisdiction. Contrary to the allegations of respondents, the issues involved in this case can be resolved without going into the intra-corporate controversies brought up by respondents.

As the regulatory body, it is the SEC's duty to ensure that THERE IS ONLY ONE SET OF STB for each corporation." (Emphasis ours)

As can be seen, the Commission has the power to take cognizance over the case since it is the Commission's duty to ensure that there is only one set of STB for each corporation. In which case, the Commission has the regulatory authority determine whether or not the Second STB may be cancelled, even if Teresita S. Lee does not have the authority to pursue the case or not all indispensable parties were impleaded in this case. Hence, the dismissal of the case is not warranted.

(a) Have jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and /or a license or permit issued by the Government; x x x
(d) Regulate, investigate or supervise the activities of persons to ensure compliance; x x x
(n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.

As to the *next issue*, the Barlis group claims that the CRMD, as a matter of judicial courtesy, should not determine whether the Second STB should be cancelled since it is in *custodia legis* with the RTC in Civil Case No. 6415-R. They claim that the Commission would be pre-empting the courts on the issue of which STB should be maintained by PINES.[25]

The contention by the Barlis group is not correct. The Second STB was submitted by the Barlis group as evidence before the RTC during the hearing for the issuance of a Writ of Preliminary Injunction enjoining them to cease and desist from acting as directors and/or officers of PINES.[26] The RTC considered the validity of the entries such as the stockholdings stated therein but did not determine which STB will be maintained by the PINES. Clearly, the CRMD did not interfere with the case before the RTC since it did not look at the validity of the entries in the STB's but rather looked into which one of the two (2) STB's is valid. Moreover, whoever will be adjudged by the RTC as the lawful stockholders, officers and directors, the Second STB will still be cancelled, as there should be ONLY ONE VALID STB for every corporation and that is the First STB. Thus, the Barlis Group's claim that the present case should be dismissed based on *litis pendentia* is baseless.

As to the *last issue*, the Barlis group argues that the First STB should be cancelled because it is in possession of the Lee group who does not have any authority to act for PINES.[27] Again, the Barlis group misses the point.

A STB should be cancelled not because it is in possession of persons who do not have authority to act for the corporation but rather because another STB is already in existence. This is based on the principle of ***Prius tempore potior jure*** (first in time, stronger in right).[28] It must be noted that another STB may be reconstituted and registered with the Commission only in the event that the original STB is lost, stolen or destroyed. In which case, the new STB should be presented to this Commission for proper registration and accompanied by a sworn statement executed by any responsible corporate officer setting forth the circumstances attending the replacement.[29]

In this case, the Barlis group never alleged that the First STB is lost, stolen or destroyed but keeps harping on their allegation that the Lee group has no authority to act for PINES. In fact, the Barlis group never specifically denied the fact of the registration of the First STB by PINES on 10 May 1978, and such fact of registration is deemed admitted.[30] Clearly, there is no issue as to the existence of the First STB.

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[25] Memorandum on Appeal, p. 24-25.
[26] Reply Memorandum, pp. 4-5.
[27] Id., p. 25-26.
[28] In the Matter of Strategic Alliance Development Corporation (STRADEC) - SEC Case No. 12-04-21 dated 14 December 2005
[29] SEC Opinion dated 12 January 1994 addressed to Atty. Eduardo M. Marasigan.
[30] Masonic Contractor, Inc., et al. v. Madjos, et al., G.R. No. 185094, 25 November 2009.

Furthermore, the reason that the Second STB was registered is that the online database of the Commission has not captured nor reflected in the system the fact of registration of the First STB on 11 May 1978. In which case, the SEC officer in charge who received that application for STB registration presumed that there was no STB registered at that time yet. Otherwise, he would have required a written explanation for the registration of another STB for PINES, or affidavit of loss if the first STB could not be found. Hence, the cancellation of the Second STB registered on 12 March 2007 is in order considering that the First STB was registered prior to it on 11 May 1978 and said First STB is not lost, stolen or destroyed.

WHEREFORE, premises considered, the assailed *Order* of the Company Registration and Monitoring Department of the Commission dated 27 April 2012 is hereby **AFFIRMED**, and the instant appeal is hereby **DENIED** for lack of merit.

SO ORDERED.

Pasay City, 06 April 2017.

TERESITA J. HERBOSA
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner

EMILIO B. AQUINO *
Commissioner

*On Official Business