Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

EN BANC

In the matter of:
TERRACOTA VILLAS, INC.

SEC Admin. Case No. 11-11-137
For: Revocation of Corporate Registration

ENFORCEMENT AND PROSECUTION DEPARTMENT,
Petitioner.
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DECISION

For resolution of the Commission *En Banc* is the Petition (for Revocation of Corporate Registration) of Terracota Villas, Inc. *("Terracota")*, dated 08 November 2011 filed by the Enforcement and Prosecution Department *("EPD")* of the Commission on 23 November 2011.

Summons addressed to the company President was issued on 01 December 2011, and released for service the day immediately after. This was returned unserved, thus, another Summons was issued on 26 January 2012 addressed to the Treasurer, but was also returned unserved. The Returns of the Process Servers submitted on 07 December 2011 and 04 April 2012 indicated that the addressees do not reside in the address stated in the Summons.

On 27 April 2012, the EPD filed a Motion for Leave to Serve Summons by Publication, which was granted. Thus, Summons was subsequently published in the 25 May 2012 issue of the Philippine Daily Inquirer, as reported by EPD through its Manifestation with Motion filed on 09 July 2012. The published Summons gave Terracota thirty (30) days from date of last publication within which to file its Answer, however, none was filed within said period.

In view of Terracota's failure to file its Answer, an Order submitting the case for resolution was issued on 06 August 2012.

Belatedly however, on 05 September 2012, an Answer to Petition dated 05 September 2012 was filed by Terracota. They question whether the Commission has acquired jurisdiction over it, citing that there was a failure to personally serve Summons on Terracota and its officers. They further argue that instead of No. 5023 Banahaw Street, Olympia Village, Makati City, the Summons s hould have been served at Mampan, Barangay Camachiles, Mabalacat City, Pampanga, citing its

Board Resolution No. 002, approved in a special meeting of Terracota's Board of Directors on 21 November 2005 filed with the Commission and which it should have taken official notice of, changing Terracota's principal place of business to that address. The argument is without merit as the Board Resolution does not by itself change the principal place of business of the corporation, as that would require an amendment of the Articles of Incorporation. Hence, for all intents and purposes, its principal office is still that stated in the Articles of Incorporation, which is 5023 Banahaw Street, Olympia Village, Makati City.

When verified against the corporate filings of Terracota on record with the Commission, it appears that said Board Resolution only states "Barangay Camachiles, Mabalacat City, Pampanga" and not "Mampan, Barangay Camachiles, Mabalacat City Pampanga". Based on the Affidavit of Service executed by Gilbert Paguigan, a deputized Process Server of the Commission, Summons was successfully served in Barangay Camachiles, Mabalacat City, Pampanga on 31 January 2012. However, the signature proving receipt of the Summons was that of a certain Allan Muli, who does not appear to be an officer of Terracota. Thus, his receipt of the Summons was not considered as valid service to Terracota. The Commission was then constrained to serve the Summons by publication. In spite of publication of the Summons, Terracota still failed to file its Answer within the given period.

Due to the fact that it was filed more than two months out of time, said Answer should be deemed not filed. In addition, EPD has pointed out in its Reply filed on 17 September 2012 that the Answer should be expunged for lack of verification as required under Sec. 3-4 of the 2006 Rules of Procedure of the Securities and Exchange Commission, that provides:

> "Sec. 3-4. **Verification.** – The complaint and answer shall be verified by an affidavit that states that the affiant has read the complaint or answer and that the allegations therein are true and correct of his own personal knowledge and/or based on authentic records. A verification based on "information and belief," or which lacks the proper form of verification, shall be considered as improper and may cause the summary dismissal of the complaint or the expunging of the answer."

However, in the interest of substantive justice, the merits of their arguments and counter-evidence will be dealt with to avoid resolving the case on mere technicality.

The instant Petition for revocation presents the following issue: whether or not the certificate of incorporation of Terracota should be revoked on the ground of fraud in its procurement.

Petitioner claims that James Chu Quiñones II, one of the incorporators of Terracota, was not in the Philippines from 1 January 2005 to 11 April 2010, and thus, could not have signed Terracota's Articles of Incorporation and By-Laws on 26

January 2005 in Makati City[1], nor could he have personally appeared before the notary public on 27 January 2005 to acknowledge execution of the Articles of Incorporation[2], as certified in the said Articles of Incorporation and By-Laws.

To support the claim that James Chu Quiñones II was not in the country to sign and acknowledge the execution of the Articles of Incorporation, a Certification from the Bureau of Immigration was attached to the Petition.[3] It states that the name "Quiñones, James II Chu" does not appear in their computer database for either arrivals or departures from 01 January 2005 to 11 April 2010.

In addition, an Affidavit was executed by Amelia C. Javier, also an incorporator of Terracota, attesting that James C. Quinones, II, along with James C. Quinones, Jr., Francis Jordan C. Quinones and Jen Jerome C. Fernando, also incorporators of Terracota, were not present or were in their respective abodes abroad.

In her Affidavit, Amelia C. Javier also claims that all of the incorporators of Terracota except herself are American citizens, contrary to the information listed in Terracota's Articles of Incorporation listing them as all Filipino. In fact, annexed to the Petition is a photocopy of Linda Chu's passport[4], which states that she is a national of the United States of America.

Petitioner argues that "fraud in the procurement of a company's Certificate of Incorporation is committed when false pretenses are employed by the grantee to acquire the same. These false pretenses may be contained in the AOI or any other documents that the SEC requires as a precondition to the approval of application for registration which results in the issuance of the Certificate of Incorporation."[5]

When the incorporators used the Articles of Incorporation and By-Laws signed and acknowledged by James Chu Quiñones II, but which could not have been signed or acknowledged by James Chu Quiñones II here in the Philippines, for the reason that he was not in the Philippines, there was fraud in the procurement of Terracota's Certificate of Registration. Fraud was also present when it was misrepresented that the incorporators were all Filipino when that is not the case.

The defenses and arguments presented in the Answer are still not sufficient to overcome the assertion of Petitioner that Terracota's procurement of its Certificate of Registration was attended with fraud.

In fact, Terracota's defenses even further confirm that fraud was committed

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[1] Annex "B" of the Petition.
[2] *Ibid.*
[3] Annex "M" of the Petition.
[4] Annex "E" of Annex "L series" of the Petition.
[5] Par. 19 of the Petition, p. 6.

in registering the corporation with the Commission. In its Answer, Terracota states that:

> "The truth of the matter is that the Articles of Incorporation and the By-Laws of the Corporation, TERRACOTA VILLAS, INC., were brought to the United States of America by LINDA CHU prior to the filing of the same before the SEC. LINDA CHU allowed her children to affix their signatures above their respective names in the AOI and By-Laws. Thus, all the signatures appearing therein, in the AOI and By-Laws are all original. Before the Notary Public in Quezon City, LINDA CHU only showed a copy of the Identification Cards (IDs) of her children, and other official and valid documents."[6]

Terracota even declares that "The appearance before the Notary Public can be dispensed with by the presentation of a copy of a **valid identification Card (ID)** or any official or valid documents showing to the effect that the signature or signatures appearing in the Article of Incorporation and By-Laws, and that in the said ID's and other valid documents are one and the same signatures of those incorporators, and that LINDA A. CHU gave assurance herself that her children swore under oath, through phone, that they affixed their signature on the said Articles of Incorporation and By-Laws."[7]

Section 1 of Public Act No. 2103 or the Notarial Law states that:

> Sec. 1. (a) The acknowledgement shall be before a notary public or an officer duly authorized by law of the country to take acknowledgements of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgement shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, acknowledged that the same is his free act and deed. The certificate shall be made under the official seal, if he is required by law to keep a seal, and if not, his certificate shall so state."

Also, Section 2(b) of Rule IV of the Rules on Notarial Practice of 2004 states that:

> "(b) <u>A person shall not perform a notarial act if the person involved as signatory to the instrument or document</u> –
>
> (1) <u>is not in the notary's presence personally at the time of the notarization; and</u>

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[6] Par. 22 of the Answer to Petition.
[7] Par. 12 of the Answer to Petition.

(2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules." (Emphasis supplied.)

Also, the Corporation Code[8] requires that the articles of incorporation shall be "duly signed and acknowledged by all of the incorporators"[9] and with a notarial acknowledgment[10].

Considering the foregoing, Terracota, in effect, has admitted to submitting Articles of Incorporation and By-Laws which are not entirely truthful by making it appear as if all incorporators signed the said documents in the presence of the notary public, when that was not the case.

In addition, Petitioner's claim that Linda Chu is not a Filipino citizen is not controverted by Terracota's presentation of Linda Chu's Certificate of Live Birth[11]. For one, it was not certified, and thus has no probative value. Also, Terracota states that "LINDA CHU is a Filipino by birth"[12], without addressing why Linda Chu was issued a passport by the United States of America, which indicates that she is an American national.

With an incorporator who appears to be a foreign national, Terracota would be in contravention of the requirement that real estate companies must be owned at least 60% by Filipinos. It is stated in the Answer that "the controlling interest, 75% of the Total Outstanding Shares of the corporation is owned and in the name of LINDA CHU"[13].

From the foregoing, there is substantial evidence to support the Petitioner's argument that the certificate of incorporation of Terracota should be revoked due to fraud in its procurement, in accordance with Section 6 (i) (1) of Presidential Decree 902-A[14], which states that:

> "Sec. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
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> xxx
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> (i) To suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law, including the following:

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[8] Batas Pambansa Blg. 68 (1980).
[9] Section 14.
[10] Section 15.
[11] Annex "C" of the Answer to the Petition.
[12] Par. 11 of the Answer to Petition.
[13] Par. 23 of the Answer to Petition.
[14] SEC Reorganization Act (1976).

1. Fraud in procuring its certificate of registration; xxx"

WHEREFORE, the Petition for the revocation of the corporate registration of Terracota Villas, Inc. is hereby **GRANTED.** The Certificate of Registration of Respondent **TERRACOTA VILLAS, INC.** is hereby **REVOKED.**

Let a copy of this Decision be furnished to the Company Registration and Monitoring Department for appropriate action. And, let this Revocation Order be also furnished to the Economic Research and Information Department for posting at the Commission's website for purposes of giving notice to the public.

SO ORDERED.

Mandaluyong City; 11 October 2012.

TERESITA J. HERBOSA
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner