HARBOUR CENTRE PORT TERMINAL, INC.,
Complainant-Appellant

- versus -

SEC En Banc Case No. 11-16-417
(SEC CRMD Case No. 15-801)

HARBOUR CENTRE PORT HOLDINGS, INC. and PETRON CORPORATION,
Respondents-Appellees.

x - x

DECISION

Before the Commission is the *Appeal*[1] filed by Harbour Centre Port Terminal, Inc. on 8 November 2016 seeking to reverse and set aside the *Order* dated 12 October 2016 (**Assailed Order**) of the Company Registration and Monitoring Department (**CRMD**), the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the instant complaint is hereby **DISMISSED**.
>
> **SO ORDERED**."

FACTUAL ANTECEDENTS

Complainant-appellant Harbour Center Port Terminal, Inc. (HCPTI) is a corporation duly organized and existing under the laws of the Philippines engaged in the business of owning, investing, managing, operating, maintaining, and developing port facilities, including other maritime activities supportive of port operations and shipping. It is owned by R-II Builders, Inc. (R-II Builders), R-II Holdings, Inc, (R-II Holdings) and Planters Development Bank.[2] Both R-II Builders and R-II Holdings, (collectively referred to as R-II Companies) were established and owned by Mr. Reghis M. Romero, II (Reghis Romero).

HCPTI is a stockholder of Manila North Harbour Port, Inc. (MNHPI), which was incorporated on 5 November 2009 pursuant to the Joint Venture Agreement between HCPTI and Metro Pacific Investments Corporation (MPIC). HCPTI initially held 65% of MNHPI's original Seven Hundred Million Pesos (₱700

---

[1] Notice of Appeal and Memorandum of Appeal dated 8 November 2016.
[2] 2010 General Information Sheet

Million) authorized capital stock (ACS), while the remaining 35% was held by MPIC.

Subsequently, MPIC sold its 35% shares in MNHPI to HCPTI. Sometime in 2011, Petron Corporation (Petron) acquired 35% of MNHPI's equity from HCPTI. Thus, HCPTI and Petron entered into a Shareholders' Agreement, setting forth their respective roles in the ownership, management and operation of MNHPI. Pursuant thereto, Michael L. Romero (Michael) was appointed by HCPTI as one of its nominees to MNHPI.

Sometime in March 2011, it appears that the R-II Companies sold its shareholdings in HCPTI to the Michael L. Romero-owned Harbour Centre Port Holdings, Inc. (Harbour Holdings), whereby Harbour Holdings gained majority ownership of and control over HCPTI. This transaction was reflected in the following documents which were filed by HCPTI and R-II Companies with the Securities and Exchange Commission (Commission):

1. GIS of HCPTI for the years 2012-2014;

2. 2011Audited Financial Statements of R-II Builders, Inc.; and

3. 2011 Audited Financial Statements of R-II Holdings, Inc.;[3]

In 2013, MNHPI increased its ACS from ₱700 Million to One Billion Pesos (₱1 Billion), with both HCPTI and Petron having subscribed to the said increase.

In the latter part of 2013, complainant-appellant allegedly discovered that Michael Romero and HCPTI's then corporate officers namely Edwin l. Jeremillo (Jeremillo) and Edwin Joseph G. Galvez (Galvez) had been perpetrating their fraudulent scheme against HCPTI and its stockholders.[4] Complainant-appellant discovered that Michael Romero, *et. al.*, forged, fabricated and manipulated spurious documents and records pertaining to the foregoing transactions resulting in Michael Romero claiming ownership and control of HCPTI. As a consequence, HCPTI removed Michael Romero, Galvez and Jeremillo as officers of HCPTI and forbade them from representing HCPTI in any capacity in MNHPI, which HCPTI communicated to MNHPI though HCPTI's letter dated 7 August 2014.

In December 2014, complainant HCPTI claims that 1,950,000 of its shares in MNHPI had been unlawfully transferred to Harbour Holdings through the use of forged and fabricated documents. Further, HCPTI received persistent reports that Michael Romero was still misrepresenting his authority to act for and in behalf of HCPTI relative to the proposed increase of ACS of MNHPI for the dilution of HCPTI's shares. Thus, complainant-appellant, through its letter dated

---

[3] Paragraph 7 of Petron's Reply Memorandum dated 28 November 2016
[4] Paragraph (d), page 6 of the Memorandum on Appeal dated 7 November 2017

15 December 2014, informed the Board of Directors of MNHPI, as well as this Commission, of the existence of an intra-corporate dispute stating that HCPTI was never consulted nor approved any proposed increase in ACS of MNHPI and that it has no intention to waive its pre-emptive right, and in fact, will exercise its right to subscribe to the increase in proportion to its shareholdings. Complainant-appellant sent several other notices primarily requesting the Commission not to act on any matter affecting the corporate status of MNHPI, such as an increase in its ACS.

However, the Commission, through its Company Registration and Monitoring Department approved the increase in ACS of MNHPI from ₱1 Billion to Three Billion Pesos (₱3 Billion) on 18 February 2015. Thus, in a letter dated 23 March 2015, complainant-appellant requested for the recall and/or revocation of the approval of MNHPI's increase in ACS. Similar request was reiterated in HCPTI's letter dated 21 July 2015. Considering that the allegations contained in HCPTI's letter partake of a complaint, the Commission, through its letter dated 27 July 2015, advised HCPTI that pursuant to the 2006 Rules of Procedure, the proper form to be filed is a verified complaint/petition for an action for revocation of the questioned Certificate of Increase of ACS.

Hence, HCPTI filed its Complaint dated 25 August 2015 praying for the revocation and/or recall of the 18 February 2015 approval of CRMD Director Ferdinand B. Sales of MNHPI's increase in ACS from ₱1 Billion to ₱3 Billion; and pending the revocation and/or recall, suspension of the implementation of the effects of such increase.

Following the exchange of pleadings and the holding of a preliminary conference, the Hearing Officers of the CRMD issued an Order dated 12 October 2016 dismissing the Complaint on the following grounds:

1. Forum shopping;

2. An indispensable party (*i.e.*, MNHPI) has not been impleaded and;

3. The increase in authorized capital stock of MNHPI did not violate SEC Office Order No. 242, s. of 2013 (SEC Office Order);

On 15 November 2016, HCPTI appealed the Order to the Commission *En Banc* arguing that:

a. the CRMD erred in dismissing the Complaint on the ground of forum shopping, considering that the relief sought in this case and in different tribunals are different and that a judgment in this instant case would not amount to res judicata;

b. the CRMD erred in dismissing the Complaint on the ground that an indispensable party has not been impleaded, considering that MNHPI need not be impleaded since the relief sought from the Commission does not require affirmative action from MNHPI and that the non-joinder of an indispensable party does not warrant the dismissal of the case; and

c. the CRMD erred in ruling that it did not violate the SEC Office Order No. 242 when the approval of such increase is in contravention of the said office order.

On 14 December 2016, Harbour Holdings filed a *Motion for Extension of Time to File Reply Memorandum* stating that its counsel will not be able to complete the Reply Memorandum within the prescribed time due to heavy pressures of work.

On 28 November 2016, Petron filed its Reply Memorandum praying that the Appeal be dismissed for utter lack of merit, arguing that:

1. The CRMD correctly dismissed the complaint on the ground of willful and deliberate forum shopping;

2. The CRMD correctly dismissed the complaint on the ground of HCPTI's failure to implead indispensable party, i.e. MNHPI; and

3. The CRMD correctly held that there was no violation of SEC Office Order No. 242, Series of 2013.

On 3 January 2017, HCPTI filed a *Manifestation and Motion* stating that Harbour Holdings' motion is a prohibited pleading under the 2006 Rules of Procedure.

On 3 January 2017, Harbour Holdings filed its *Reply Memorandum* praying that the Memorandum Appeal of HCPTI be dismissed due to the same grounds raised by Petron, to wit:

1. the CRMD correctly dismissed the complaint on the ground of forum shopping;

2. the CRMD correctly dismissed the complaint on the ground that MNHPI, an indispensable party, has fatally not been impleaded; and

3. the CRMD did not violate the rules in SEC Office Order 242 and Director Sales had properly acted on MNHPI's application consistent with SEC Office Order 242.

On 1 March 2017, Petron filed an *Urgent Manifestation* stating that the RTC Manila Branch 14 in SEC Case No. 15-134194 dismissed the complaint of HCPTI. The Court explicitly declared that the complaint is a nuisance or harassment suit by reason of forum shopping in RTC Manila and in SEC.

ISSUES

I. Whether or not the Reply Memorandum and Comment/Opposition of Harbour Holdings should be considered as filed.

II. Whether or not the CRMD erred in dismissing the complaint on the ground of forum shopping.

III. Whether or not the CRMD erred in dismissing the complaint on the ground of non-joinder of indispensable party.

IV. Whether or not the CRMD erred in dismissing the complaint on the ground of non-violation of SEC Office Order No. 242.

RULING

The Commission shall resolve the foregoing issues in *seriatim*.

I. PROHIBITED PLEADING:

Harbour Holdings' *Motion for Time to File Reply Memorandum* and *Motion for Time to File Comment* are prohibited pleadings under Section 3-6, Rule III of the 2006 Rules of Procedure (Rules),[5] to wit:

> "SEC. 3-6. *Prohibited Pleadings.*—The following pleadings or any submission that is filed or made under a similar guise or title shall not be allowed: x x x
>
> e) Motion for extension of time to file pleadings, affidavits, or any other submission of similar intent; x x x

5 2006 Rules of Procedure were in effect when HCPTI filed its Memorandum on Appeal on 8 November 2016.

Should one be filed, said prohibited pleadings or submissions shall be AUTOMATICALLY EXPUNGED from the records of the case." (Emphasis Ours)

Clearly, the Rules provide that Motions for Extension of Time to file pleadings, such as a Reply Memorandum or a Comment/Opposition of HCPTI, are prohibited pleadings; and, if any such motions are filed, they will be AUTOMATICALLY EXPUNGED from the records of the case.

Considering that the *Motion for Time to File Reply Memorandum* filed by HCPTI is prohibited pleading, they will be automatically expunged from the records of the case. Therefore, HCPTI's Reply Memorandum is deemed to have not been filed.

II. FORUM SHOPPING:

a. Identity of Reliefs

Complainant-appellant argues that there is no forum shopping because (1) there is no identity of rights asserted and reliefs prayed for in SEC Case No. 15-134194 (RTC-Manila Case) and in the instant case; and (2) there will be no res judicata in either the RTC-Manila case or in the instant case. According to the complainant-appellant, the sole issue to be resolved herein is the validity of the approval of the application for increase in MNHPI's capital stock, which was allegedly done in contravention of SEC Office Order No. 242.

In the case of ***Jesse Yap vs. Court of Appeals***[6], the Supreme Court exhaustively discussed forum shopping in this wise:

> "Forum shopping is the institution of two or more actions or proceedings involving the same parties for the same cause of action, either *simultaneously or successively*, on the supposition that one or the other court would make a favorable disposition. Forum shopping may be resorted to by any party against whom an adverse judgment or order has been issued in one forum, in an attempt to seek a favorable opinion in another, other than by appeal or a special civil action for *certiorari*. Forum shopping trifles with the courts, abuses their processes, degrades the administration of justice and congest court dockets. What is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues. Willful and

---

[6] G.R. No. 186730, 13 June 2012 (Citations omitted)

deliberate violation of the rule against forum shopping is a ground for summary dismissal of the case; it may also constitute direct contempt.

To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.

Litis pendentia as a ground for the dismissal of a civil action refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious. The underlying principle of *litis pendentia* is the theory that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action. This theory is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided for the sake of the stability of the rights and status of persons.

The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other."

Since complainant-appellant did not question that there is identity of parties in the instant case and those filed in courts, the Commission shall only resolve the issue as to the existence of the other elements of *litis pendentia*.

The Commission agrees with the CRMD that all the elements of *litis pendentia* exist and that HCPTI committed forum shopping, thereby warranting the outright and summary dismissal of SEC Case No. 15-801. As culled from the pleadings submitted, the following cases involving the parties were instituted:

i. "Harbour Centre Port Terminal, Inc. v. Manila North Harbor Port, Inc., *et. al.*", SEC Case No. 15-134194, RTC, Br. 14, Manila Case) [Note: Re: Questioned were the nomination and election of the officers of North Harbour for 2015, as well as the increase in its ACS.]

ii. "Harbour Centre Port Holdings, Inc., Michael L. Romero, Edwin L. Jeremillo, and Edwin Joseph G. Galvez vs. R-II

Builders, Inc. and R-II Holdings, Inc., Reghis M. Romero, II, Jerome R. Canlas, Amelia B. Lazaro, and Mark Roy Boado," SEC Case No. 14-131588 before the Regional Trial Court (RTC) Manila (The Second RTC-Manila Case) [Note: Re: For nullification of the special stockholders' meeting and election and officers of HCPTI on Feb. 11, 2014.]

iii. Reghis M. Romero, II, R-II Builders, Inc. and R-II Holdings, Inc. vs, Michael Romero and Harbour Centre Port Holdings, Inc., Civil Case No. R-QZN-15-03754 before RTC Quezon City (The Quezon City Case)

iv. "Harbor Centre Port Terminal, Inc. vs. Manalo, *et. al.*," Civil Case No. 15-133164 [the "Replevin Case" for 15 motor vehicles] before RTC Manila [Note: Different from "Harbour Centre Port Terminal, Inc. v. Manila North Harbor Port, Inc., et. Al.", SEC Case No. 15-134194, RTC, Br. 14, Manila Case)

v. One Source Port Support Services, Inc. vs. Harbour Centre Port Terminal Inc., et.al., Civil Case No. 74606 before RTC Pasig

vi. Harbour Centre Port Terminal, Inc. (represented by Atty. Jerome Canlas) vs. Romero, Jeremillo and Galvez, XV-INV-14C-00124 before the Office of the City Prosecutor (OCP) of Navotas City

vii. Harbour Centre Port Terminal, Inc. (represented by Atty. Jerome Canlas) vs. Romero, Jeremillo and Galvez, XV-INV-14B-01348 before the Office of the City Prosecutor (OCP) of Manila City

viii. Harbour Centre Port Terminal, Inc. (represented by Atty. Jerome Canlas) vs. Romero, Jeremillo and Galvez, XV-INV-14E-01465 before the Office of the City Prosecutor (OCP) of Makati City

HCPTI's complaint in SEC Case No. 15-134194 before the RTC is, among others, to declare null and void the increase in MNHPI's increase in authorized capital stock from One Billion Pesos (₱1,000,000,000.00) to Three Billion Pesos (₱3,000,000,000.00) as well as any and all acts arising therefrom or in connection therewith, alleging that it's shareholdings in MNHPI have been unlawfully diluted through the illegal transfer of its shares to Harbour Holdings and the subscription by Petron to the said illegal increase of capital stock.

The Second RTC-Manila Case was for the nullification of the special stockholders' meeting and election of directors and officers of HCPTI on 11 February 2014, which meeting was called by Mr. Reghis M. Romero, II. During such meeting, Mr. Reghis M. Romero II was elected as President and Chairman of HCPTI, without the participation of its majority stockholder, Harbour Holdings, represented by Mr. Michael L. Romero.

The Quezon City Case was for the declaration of nullity of the aforesaid 2 March 2011 Deeds of Assignment. The issue in that case (which will likely be passed upon in the RTC-Manila Case, if the complaint therein is not dismissed outright, and the Second RTC-Manila Case) was whether or not the Deeds of assignment executed by the R-II Companies were valid. The resolution of this case will determine: (i) who the rightful owner of HCPTI is, and (ii) who is entitled to exercise stockholders' rights in HCPTI (which is the same issue in the RTC-Manila Case and in the Second RTC-Manila Case).

A review of the nature of the aforementioned cases clearly reveals that the issues raised therein involve the determination of who between Harbour Holdings and R-II Companies owns or controls HCPTI. In the case at bar, while the prayer sought by HCPTI is for the Commission to revoke and/or recall its approval of MNHPI's increase in authorized capital stock from One Billion Pesos to Three Billion Pesos; and pending revocation or recall, suspend the effects of such increase on the ground of non-compliance with SEC Office Order No. 242, it is essentially questioning such approval notwithstanding the alleged existence of intra-corporate dispute between the stockholders in MNHPI. While the specific reliefs in the aforementioned cases appear to be different, it cannot be gainsaid that HCPTI seeks to recover from different fora the same reliefs arising out of the same factual antecedents.

b. Res Judicata

Hornbook is the rule that identity of causes of action does not mean absolute identity; otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or the relief sought. The test to determine whether the causes of action are identical is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would sustain both, the two actions are considered the same, and a judgment in the first case is a bar to the subsequent action. Hence, a party cannot, by varying the form of action or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated between the same parties or their privies. Among the several tests resorted to in ascertaining whether two suits relate to a single or common cause of action are: (1) whether the same evidence would support and sustain both the first and second causes of action; and (2) whether the defenses in one case may be used to substantiate the complaint in the other. Also fundamental is the test of determining whether the cause of action in the second case existed at the time of the filing of the first complaint.[7]

---

7 *Supra.*

As aforestated, the same factual antecedents prompted the filing of the RTC-Manila Case, Second RTC-Manila Case, and Quezon City Case. As such, HCPTI's cause of action in said cases necessarily implies reliance on the same evidence for its resolution. By seeking to revoke/recall the approval of the increase in MNHPI's ACS in the present case, HCPTI attempted to secure the suspension of the effects of such increase, which is precisely the relief HCPTI is seeking in court. HCPTI played with court processes and exposed the different fora to the possibility of rendering conflicting reliefs.

III. NON-JOINDER OF INDISPENSABLE PARTIES:

Complainant-appellant argued that the CRMD erred in dismissing the complaint on the ground that an indispensable party has not been impleaded. According to HCPTI, the non-joinder of indispensable party does not warrant the dismissal of a case and the proper remedy should have been to implead MNHPI, if indeed the CRMD believed that it was an indispensable party.

The Commission agrees with the complainant-appellant.

Rule 3, Sec. 7 of the Rules of Court defines indispensable parties as those who are parties in interest without whom no final determination can be had of an action. They are those parties who possess such an interest in the controversy that a final decree would necessarily affect their rights so that the courts cannot proceed without their presence. A party is indispensable if his interest in the subject matter of the suit and in the relief sought is inextricably intertwined with the other parties' interest.[8]

However, nowhere in the rules is it stated that a case can be properly dismissed on the ground of non-joinder of indispensable party. In fact, Rule 3, Section 11 of the Rules of Court provides:

> "Sec. 11. *Misjoinder and non-joinder of parties.*—Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately.

In ***Domingo v. Scheer,***[9] the Supreme Court held that the proper remedy

---

8 Perfecto Macababbad, Jr.,- deceased, Substituted by his heirs Sophia Macababbad, Glenn M. Macababbad, et.al. vs. Fernando G. Masirag, Faustina G. Masirag, et.al., G.R. No. 161237, January 14, 2009 (Citations omitted)

9 G.R. No. 154745, January 29, 2004 as cited in Macababad vs. Masirag (*supra*).

when a party is left out is to implead the indispensable party at any stage of the action. The court, either *motu proprio* or upon the motion of a party, may order the inclusion of the indispensable party or give the plaintiff opportunity to amend his complaint in order to include indispensable parties. If the plaintiff to whom the order to include the indispensable party is directed refuses to comply with the order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion. Only upon unjustified failure or refusal to obey the order to include or to amend is the action dismissed.

In the present case, while the Commission agrees with the CRMD that MNHPI is an indispensable party, dismissing the complaint on the ground that MNHPI was not impleaded is erroneous. The CRMD's reliance on the case of ***Marcelino M. Florete, Jr., et. al. vs. Rogelio M. Florete, et. al.***[10] is misplaced. In the said case, the ground for dismissing the case is not the failure to implead an indispensable party but the fact that the petitioners lack cause of action. In fact, the Supreme Court held that:

> "There are two consequences of a finding on appeal that indispensable parties have not been joined. First, all subsequent actions of the lower courts are null and void for lack of jurisdiction. Second, the case should be remanded to the trial court for the inclusion of indispensable parties. **It is only upon the plaintiff's refusal to comply with an order to join indispensable parties that the case may be dismissed.**" (Emphasis ours).

IV. SEC Office Order No. 242, Series of 2013 (SEC Office Order No. 242):

a. SEC Office Order No. 242 was uploaded to the Scribd website by one "Darlon B. Serenio" WITHOUT any authority from the Commission

Complainant-appellant argued that the CRMD should not have acted on MNHPI's application for increase of its ACS as it is in contravention of SEC Office Order No. 242. To bolster its argument, HCPTI averred that there exists an intra-corporate dispute in MNHPI and that the procedure laid down in SEC Office Order No. 242 should have been followed.

Harbour Centre Port Terminal, Inc.'s argues on pages 39 and 40 of its Memorandum on Appeal that "SEC Office Order No. 242 is available publicly online," to wit:

> *"<u>SEC Office Order No. 242 binds the general public and has been previously</u>*

[10] G.R. No. 174909, 20 January 2016.

been applied in the NADECOR Case.

"The findings of the Hearing Officers that "SEC Office Order No. 242 series of 2013 is merely a set of internal rules of procedure and generally not applicable to the public, thus Petron cannot be bound by it.", is grossly misleading. **SEC Office Order No. 242 is available publicly online** and consistently applied by the CRMD and by this Honorable Commission in the NADECOR Case.

x x x"

[Emphasis supplied]

If one will access *sec.gov.ph* on his browser and use the "Search" facility to search for "SEC Office Order No. 242, Series of 2013" and its different permutations, what is displayed on the webpage of the Commission is (bold for emphasis):

Sorry, nothing found.

While the controversy was still with the CRMD, Harbour Centre Port Terminal, Inc.'s attention was called to this by Petron Corporation on page 33 of its Answer:

> 66. The basis of the Complaint is the alleged violation of SEC Office Order No. 242, series of 2013. However, said Office Order appears to be an internal document and is not even available to the general public. Undersigned counsel attempted to secure a copy of said Office Order, but the SEC's Office of the Commission Secretary informed counsel that the SEC does not release the Office Order or make the same available to the public. How, then, did Complainant even secure a copy of the Office Order and make the same the basis for its Complaint? x x x

In its Consolidated Reply, page 16, Harbour Centre Port Terminal, Inc. stated that the link to said Office Order 242, Series of 2013 was the following link:

http://www.scribd.com/doc/173993049/SEC-Office-Order-No-242-Guidelines-for-Applications-for-Amendment-of-the-Articles andor-By-Laws-pdf#scrbd

As it appears, the matter is ripe for a "**Judgment on the Pleadings** [Rule 34, 1997 Rules of Civil Procedure, as amended]," as Harbour Centre Port Terminal, Inc. has judicially admitted Petron Corporation's charge in its Answer in the CRMD case that the same is not available to the general public. And it is "the best evidence which affords the greatest certainty of the *FACTS* in dispute" (***Heirs of Miguel Franco v. Court of Appeals***, 418 SCRA 60).

Scribd, as correctly described by Petron Corporation, is a commercial digital library. This SEC Office Order was uploaded to the Scribd website by one "Darlon B. Serenio." The Commission is minded to investigate this matter and will ask scribd.com to take it down as it does not have the legal right to even include the same in its servers. As in fact, scribd.com charges anyone interested in accessing the same.

SCRIBD.COM IS NOT THE OFFICIAL WEBSITE OF THE SECURITIES AND EXCHANGE COMMISSION. IT IS MAKING MONEY ON AN INTERNAL SEC RULE UPLOADED TO IT WITHOUT AUTHORIZATION FROM THE SECURITIES AND EXCHANGE COMMISSION.

To state that "SEC Office Order No. 242 is available publicly online…" imply that it is a published rule, when in fact it is not.

When there is a factual misrepresentation encountered by the Commission, the type of corrective action described in ***Hazel-Atlas*** must be applied, the corrective action "call[ING] for nothing less than a COMPLETE DENIAL of relief to … [Harbour Centre Port Terminal, Inc.]" which the Commission did in the previous cases of "In the Matter of the Petition for Suspension of Payments, Violago Motors Sales Corporation," SEC AC (unnumbered), SEC Case No. 2597, August 1, 2016, citing ***Chambers v. NASCO, Inc.***, 501 U.S. 32 [1991], which cites ***Hazel-Atlas Glass Co. v. Hartford-Empire Co.***, 322 U.S. 238 [1944]).

b. The system of government issuances in the form of orders and circulars explained

The system of government issuances in the form of orders and circulars is clarified and explained in Executive Order No. 292, otherwise known as the "Administrative Code of 1987". As discussed in its introductory clauses, the Code was enacted for the following purposes, among others:

x x x

> WHEREAS, the effectiveness of the Government will be enhanced by a new Administrative Code which incorporates in a unified document the major structural, functional and **procedural principles and rules of governance**; and
>
> WHEREAS, a new Administrative Code will be of optimum benefit to **the people and Government officers and employees as it**

embodies changes in administrative structures and procedures designed to serve the people;

x x x "

What issuances are intended for the guidance of the general public, and for that matter, should be published and circularized? On the other hand, what issuances are intended for the purpose of administrative governance directed only at public officers and employees?

This is addressed in BOOK IV, Chapter 11 of the code, on "Administrative Issuances" particularly the following section:

> "SECTION 50. General Classification of Issuances.—The administrative issuances of Secretaries and heads of bureaus, offices or agencies shall be in the form of circulars or orders.
>
> (1) Circulars shall refer to issuances prescribing policies, rules and regulations, and procedures promulgated pursuant to law, applicable to individuals and organizations outside the Government and designed to supplement provisions of the law or to provide means for carrying them out, including information relating thereto; and
>
> (2) **Orders shall refer to issuances directed to particular offices, officials, or employees, concerning specific matters including assignments, detail and transfer of personnel, for observance or compliance by all concerned**. (Emphasis supplied)"

SEC Office Order No. 242, s. 2013 is an internal issuance addressed to SEC employees ONLY, and NOT for dissemination to the general public. It directs SEC employees covered by the directive to comply with guidelines when confronted with a particular matter as indicated in its subject: "GUIDELINES FOR APPLICATION OF AMENDMENT OF THE ARTICLES AND/OR BY-LAWS WHERE THERE IS MORE THAN ONE SET OF GENERAL INFORMATION SHEET (GIS) FILED WITH THE COMMISSION." Being an internal issuance, NO rights can be drawn nor should it be invoked to pursue a cause of action. Moreso, when the dispute or matter under contention does not fall within the scope of the guidelines as in this case. As the title itself indicates, SEC Office Order No. 242, s. 2013 applies when the Commission is confronted with more than one GIS for the same period for the same corporation. That is not the circumstance in this case.

d. The Commission holds that there exists an intra-corporate dispute in HCPTI, but not in MNHPI

Complainant-appellant further argued that its letter dated 15 December 2014 proves the existence of intra-corporate controversy in MNHPI.

The Commission is not persuaded. Section 5 of Presidential Decree (P.D.) No. 902-A defines "intra-corporate controversies" as:

> a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission;
>
> b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity; and
>
> c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.[11]

In ***Medical Plaza Makati Condominium Corporation vs. Robert H. Cullen***[12], the Supreme Court held:

> "In determining whether a dispute constitutes an intra-corporate controversy, the Court uses two tests, namely, the relationship test and the nature of the controversy test.
>
> "An intra-corporate controversy is one which pertains to any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the State insofar as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves.[22] Thus, under the relationship

[11] Vitaliano N. Aguirres II, at al. vs. FQB+7, Inc. G.R. No. 170770, 09 January 2013.

[12] G.R. No. 181416, 11 November 2013.

test, the existence of any of the above intra-corporate relations makes the case intra-corporate.

"Under the nature of the controversy test, 'the controversy must not only be rooted in the existence of an intra-corporate relationship, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation.' In other words, jurisdiction should be determined by considering both the relationship of the parties as well as the nature of the question involved."

Applying the two tests, the Commission holds that **there exists an intra-corporate dispute in HCPTI, but not in MNHPI**. The factual antecedents as well as the above-enumerated pending cases disclose that the controversy is between the R-II Companies represented by the Reghis Romero and Harbour Holdings represented by Michael Romero, which are stockholders of HCPTI. As such, the controversy lies on the determination of the true owners of HCPTI.

V. JOINT MOTION TO DISMISS

Received by the Commission on September 11, 2018 is a "Joint Motion to Dismiss" signed by Counsels in representation of their principals, praying that "the Honorable En Banc dismiss the instant case with prejudice." The motion was premised as follows:

"The parties, through their respective counsels, respectfully manifest that they have amicably settled all their claims, counterclaims, and causes of action against each other pertaining to the above-captioned case to their mutual satisfaction.

"Further, by virtue of a compromise agreement, the Reghis M. Romero group and the Michael L. Romero group have both divested themselves of all rights and interests over their respective shareholdings in Manila North Harbour Port Inc."

The Commission notes that the 1987 Constitution mandates the Supreme Court to promulgate rules that shall provide a simplified and inexpensive procedure for the speedy disposition of cases in order to remedy the sad state of long-drawn-out court litigations. Pursuant to the constitutional provision, the Supreme Court issued S.C. Circulars, Memoranda and Administrative Orders making mediation as mandatory in certain types of civil cases. The 1997 Rules of Civil Procedure requires the courts to consider the possibility of an amicable settlement or of a submission to alternative modes of resolution.

Later on, Congress enacted RA 9285 or the Alternative Dispute Resolution Act (ADR Law) of 2004 which declares that it is a policy of the State to encourage

Later on, Congress enacted RA 9285 or the Alternative Dispute Resolution Act (ADR Law) of 2004 which declares that it is a policy of the State to encourage and actively promote the use of Alternative Dispute Resolution systems as an important means to achieve speedy and impartial justice and declog court dockets.

While the Commission lauds the Reghis M. Romero group, the Michael L. Romero group, and the other parties in this case in agreeing to put an amicable end to their dispute, we have to bear in mind that the matter before us is a regulatory matter that is better resolved on the merits for the guidance of the public. The interest of the investing public is better served if the substantive matters of this case is resolved and made instructive.

JUDGMENT

WHEREFORE, premises considered, the instant appeal is hereby **DENIED** for lack of merit. The Company Registration and Monitoring Department's *Order* dated 12 October 2016 is hereby **MODIFIED** insofar as it dismissed the complaint on the ground of non-joinder of indispensable party. All other aspects of the said Order are hereby **AFFIRMED**.

The "Joint Motion to Dismiss" signed by Counsels in representation of their principals, praying that "the Honorable En Banc dismiss the instant case with prejudice" is **NOTED**.

SO ORDERED.

Pasay City; October 4, 2018.

EMILIO B. AQUINO
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

Commissioner