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

JESUS M. MELEGRITO, et. al.,
Petitioners-Appellees,

-versus- **SEC En Banc Case No. 06-21-484**

GA TOWER 1 CONDOMINIUM CORPORATION, et. al.,
Respondents-Appellants.

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DECISION

Before the Commission En Banc is the Appeal Memorandum"[1] dated 20 May 2021 (the "Appeal") filed by GA Tower 1 Condominium Corporation (the "Corporation") praying for the reversal and setting aside of the Decision dated 8 October 2020 (the "Assailed Decision") and Resolution dated 12 May 2021 ("Resolution") of the Office of the General Counsel ("OGC"), the dispositive portion of the Assailed Decision and Resolution reads:

> "**WHEREFORE**, premises considered, the Petition is hereby **GRANTED**. The Petitioners are hereby **DIRECTED** to (a) call and conduct the annual members' meeting within thirty (30) days from receipt of this Decision, (b) designate from among them a presiding officer, and (c) conduct an election of the Board of Trustees. GA Tower 1, through its duly elected Corporate Secretary, is thereafter **DIRECTED** to file with this Office a Manifestation and Compliance within ten (10) days from the conduct of the annual members' meeting.[2]
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> "**WHEREFORE**, premises considered, the instant *Motion for Reconsideration* is hereby **DENIED** for lack of merit and for having become moot and academic. The Decision dated 08 October 2020 of this Office stays."[3]

PARTIES

Appellant Corporation is a non-stock, non-profit corporation duly registered with the Securities and Exchange Commission (the "Commission") under SEC Registration No. CN200600330.[4] The Corporation is joined by

[1] Filed on 24 May 2021.
[2] Decision dated 8 October 2020.
[3] Resolution dated 12 May 2021.
[4] Registered on 6 January 2006.

Appellants Delfin S. Lee (President), Dexter L. Lee (CEO), Irene M. Santos (CFO), Angeline Lourdes C. Mallillin (Corporate Secretary), Christina Sagun (Director), and Tbram G. Cuyugan (CFO for 2012 and 2013; OIC, Vice President Globe Asiatique Realty Holdings Corp.), who are members of its Board of Directors and Officers.

Appellees Jesus M. Melegrito, Rocela D. Cayanan, Rose Anna R. Banal, and Jaime F. Tiongson are all unit owners of GA Tower 1 Condominium and members of the Corporation.

RELEVANT FACTS

On 3 January 2018, Appellees filed the Petition for Calling of Meeting and Election of Officers (the "Petition") praying, among others, that the OGC issues an order directing them to call and conduct the regular meeting of the Corporation, and send the required notices in accordance with the Corporation's by-laws. In support thereof, Appellees alleged that the Corporation has not conducted a meeting and election since 2006, in violation of the relevant provisions of the Corporation Code.

In their Answer with Compulsory-Counter Claim filed on 18 June 2018, Appellants prayed for the dismissal of the Petition on the ground that the Commission has no jurisdiction over intra-corporate controversies, and for failure of Appellees to state a cause of action. By way of an affirmative defense, Appellants alleged that the Corporation has called and conducted a meeting on 15 June 2017 as indicated in the General Information Sheet ("GIS") submitted to the Commission on 30 June 2017.

On 16 August 2018, the parties appeared during the Preliminary Conference that was called and conducted by the OGC, where Appellees maintained that no meeting and election were conducted on 15 June 2017 and 5 February 2018. Appellants on the other hand, were directed to produce Angeline Lourdes Mallillin ("Ms. Mallillin"), the Corporate Secretary of the Corporation, and to submit the minutes of the 2017 and 2018 meetings. During the Preliminary Conference, the parties were informed that allegations or matters that are intra-corporate in nature will not be addressed and passed upon by the Office as the same are outside the jurisdiction of the Commission.

On different occasions, the OGC issued three (3) Subpoena *Ad Testificandum/Duces Tecum* directing Ms. Mallillin to appear in the succeeding Preliminary Conferences,[5] to testify on the factual circumstances relating to the alleged 2017 and 2018 meetings and to submit the minutes of the said meetings. Ms. Mallillin however failed to appear in all the Preliminary Conferences called and conducted by the OGC. Appellees on the other hand presented Mr. Tiongson, Mr. Pablo and Ms. Banal, all of whom are members of the Corporation, who testified that no meeting and election were conducted.

In compliance with the Order dated 21 December 2018 issued by the OGC, Appellees submitted their Memorandum which reiterated, among others, the allegation that the Corporation failed to call and conduct a regular meeting and election in violation of the By-laws of the Corporation and the Corporation Code. Appellees emphasized that the said violation was supported by Appellants' failure to present any evidence showing the conduct of the alleged 2017 and 2018 Meetings.

On 17 July 2019, the OGC issued an Order directing Appellants to submit additional documents or evidence to prove that the meeting, which was stated in the GIS submitted by the Corporation, actually transpired. Appellants submitted their Compliance where they attached a Notice dated 2 January 2018, alleged to have been posted in conspicuous places inside GA Tower 1, to show that a meeting was conducted.

On 8 October 2020, the OGC issued the Assailed Decision granting the Petition, and directed the conduct of an annual members' meeting on the basis of the finding that the Corporation has failed to comply with the mandatory provisions of Section 50 of the Corporation Code.

Appellants thereafter filed a Motion for Reconsideration on 26 October 2020 (the "Motion") reiterating their position that the Commission has no jurisdiction over the instant case which is intra-corporate in nature i.e. the allegations and the issue presented in the Petition relates to the validity of the election of the members of the board of trustees.[6]

On 16 December 2020, an Entry of Appearance as counsel for Appellees (then Petitioners) and an Urgent Ex Parte Motion to Resolve were filed by Castillo Law Office, who furnished Appellants' counsel with copies of the same.[7]

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[5] Subpoena dated 24 August 2018 for the Preliminary Conference on 29 August 2018; Subpoena dated 30 August 2018 for the Preliminary Conference on 19 September 2018; Subpoena dated 26 September 2018 for the Preliminary Conference on 17 October 2018

[6] Par. 9 of the Motion for Reconsideration

[7] Annex "1" of the Comment Ad Cautelam dated 28 June 2021

In its Resolution dated 12 May 2021, the OGC denied Appellants' Motion for lack of merit and after finding that the issue presented has become moot and academic. The OGC held that the Commission has jurisdiction over the instant case insofar as it relates to the implementation of Section 50 of the Corporation Code, and pointed out that the Assailed Decision only passed upon the issue on the Corporation's failure to hold and conduct a regular meeting and election. Finally, the OGC held that the Motion is also dismissible on the ground of mootness considering that the Corporation has already conducted a meeting and election on 2 November 2020.

On 10 June 2021, a Notice of Withdrawal of Appearance was filed by Appellees' counsel, Atty. Venus B. Ambrona, who furnished Appellants' counsel with a copy thereof.

Acting on the Appeal, the Commission En Banc issued an Order on 17 June 2021, directing Appellees to file their Comment.

On 30 June 2021, Appellees filed their COMMENT AD CAUTELAM dated 28 June 2021 (the "Comment") praying for the dismissal of the Appeal on the ground that the same was not perfect which resulted in the finality of the Assailed Decision. Appellees also argued that the Appeal is dismissible for utter lack of merit considering that the matters ruled upon by the OGC in the Assailed Decision are within the regulatory power and authority of the Commission.

ISSUES

Appellants present the following assignment of errors which the Commission will pass upon in this Decision:

(1) The OGC committed reversible error in taking cognizance of the instant case which is intra-corporate in nature.
(2) The OGC committed reversible error in ruling that the issues presented have become moot and academic.

RULING

The Commission finds the Appeal bereft of merit and resolves to deny the same.

The Appeal is infirm for its failure to comply with the requirements prescribed under the 2016 Rules of Procedure of the Securities and Exchange Commission (the "Rules").

Before We discuss and rule on the substantive issues, it is necessary that We consider and pass upon the procedural issue presented by Appellees in relation to the filing of the Appeal i.e. there is no perfected appeal for failure of Appellants to furnish the counsel of Appellees with a copy of the Appeal in violation of the Rules.[8]

The importance and propriety of resolving this issue relates to the implementation of the principle settled in jurisprudence that an appeal is a mere statutory privilege which requires party litigants who wish to avail of such remedy to strictly comply with the requirements provided by law or the rules. This principle was amply expounded by the Supreme Court in *Boardwalk Business Ventures, Inc. vs Villareal*[9] which held that:

> "The right to appeal is neither a natural right nor is it a component of due process. <u>It is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law</u>. This being so, x x x <u>an appealing party must strictly comply with the requisites laid down in the Rules of Court. Deviations from the Rules cannot be tolerated</u>. The rationale for this strict attitude is not difficult to appreciate as <u>the Rules are designed to facilitate the orderly disposition of appealed cases</u>. In an age where courts are bedeviled by clogged dockets, the Rules need to be followed by appellants with greater fidelity. Their observance cannot be left to the whims and caprices of appellants." (Underscoring supplied)

Relative thereto, Part V, Rule III, Section 3-3 of the Rules provides for the manner and the requirements to perfect an appeal with the Commission, thus:

> "SEC. 3-3. Perfection of Appeal. - The appellant shall perfect an appeal by filing the following with the Commission En Banc, through the Office of the General Counsel, within the period prescribed in the preceding section: (i) an appeal memorandum in six (6) legible copies; (ii) proof of service of a copy of the appeal memorandum on the appellee and/or the Director of the Operating Department, the Special Hearing Panel or the Self-Regulatory Organization concerned, as the case may be; and (iii) payment of the appeal fee and other applicable fees."

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[8] Par. 1 of the Comment Ad Cautelam
[9] G.R. No. 181182, April 10, 2013

Consistent with the principle that an appeal is a statutory privilege which requires full compliance on the part of the appellant of the requirements prescribed by the rules, Section 3-5(a) of the Rules specifically sanctions the outright dismissal of an appeal that fails to comply with the Rules, thus:

> "SEC.3.5. Action on the Appeal Memorandum. -
>
> a. Grounds for Outright Dismissal of an Appeal. - From an initial examination of the allegations or averments in the appeal memorandum and such documents that may be attached thereto, **the appeal may be dismissed outright for failure to comply with requirements set forth under these Rules**." (Emphasis and underscoring supplied)

In the instant case, the records show that the Appeal was filed on 24 May 2021. The records also show that while Appellees' current counsel on record, Castillo Law Office, filed its Entry of Appearance on 16 December 2020, Appellees' original counsel on record, Atty. Venus Ambrona, only filed her Notice of Withdrawal on 10 June 2021, or after the Appeal was filed. Given this factual backdrop, Appellants cannot be faulted in assuming that Castillo Law Office was collaborating with Atty. Ambrona at the time of filing of the filing of the Appeal since the latter filed her Notice of Withdrawal only after the Appeal was filed. Relative thereto, it should be emphasized that the Supreme Court held in *Venterez vs Atty. Cosme*[10] that a counsel's right to withdraw from a case arises only from the client's written consent or from a good cause, thus:

> "The rule in this jurisdiction is that a client has the absolute right to terminate the attorney-client relation at any time with or without cause. The right of an attorney to withdraw or terminate the relation other than for sufficient cause is, however, considerably restricted. Among the fundamental rules of ethics is the principle that an attorney who undertakes to conduct an action impliedly stipulates to carry it to its conclusion. He is not at liberty to abandon it without reasonable cause. A lawyer's right to withdraw from a case before its final adjudication arises only from the client's written consent or from a good cause." (Emphasis supplied)

The records show that Appellees' written consent to the withdrawal of Atty. Ambrona was only given in the Notice of Withdrawal that was filed on 10 June 2021. We thus hold that Appellants substantially complied with the requirement to furnish Appellees counsel with a copy of the Appeal.

Be that as it may, the Commission however finds that Appellants failed to pay the appeal fee required under Section 3-3(iii) of the Rules within the

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[10] A. C. No. 7421, October 10, 2007

period to file an appeal, which resulted in the failure of the Commission to acquire jurisdiction over the appeal, and in the consequent finality of the Assailed Decision.

In the Appeal, Appellants expressly admitted that they received a copy of the Assailed Decision on 14 May 2021 and that they had fifteen (15) days or until 29 May 2021 within which to file the same.[11] The records however show that Appellants paid the appeal fee only on 3 June 2021, or six (6) days after the period to file an appeal has lapsed. Verily, considering that the filing of appeal fees is mandatory and jurisdictional, the mere filing of the Appeal within the reglementary period, unaccompanied by the payment of the appeal fees within the same period, did not toll the running of the prescriptive period. Hence, the Commission holds that the failure of Appellants to pay the appeal fee within the reglementary period resulted in their failure to perfect an appeal and rendered the Assailed Decision final and executory. In *Acacia Homeowners Association, Inc. vs. Purification Fetalcorin,*[12] the Supreme Court denied a Petition after finding that the docket fees were paid a day after the reglementary period has lapsed, and reiterated the following rule, thus:

> "<u>It has been repeatedly held that that the payment of appeal docket fees is both mandatory and jurisdictional</u>. It is mandatory as it is required in all appealed cases, otherwise, the Court does not acquire the authority to hear and decide the appeal. <u>The failure to pay or even the partial payment of the appeal fees does not toll the running of the prescriptive period, hence, will not prevent the judgment from becoming final and executory</u>." (Underscoring supplied)

On the basis thereof, the Appeal should be dismissed as the Commission has not acquired the authority to hear and decide on the same, and on the ground that the Assailed Decision has become final and executory by operation of law,[13] after Appellants failed to pay the appeal fees within the reglementary period.

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[11] Pars. 2 and 3 of the Appeal

[12] G.R. No. 251273, June 30, 2020.

[13] "A judgment becomes 'final and executory' by operation of law. Finality becomes a fact when the reglementary period to appeal lapses and no appeal is perfected within such period. As a consequence, **no court (not even this Court) can exercise appellate jurisdiction to review a case or modify a decision that has became final.**

When a final judgment is executory, it becomes immutable and unalterable. It may no longer be modified in any respect either by the court which rendered it or even by this Court. The doctrine is founded on considerations of public policy and sound practice that, **at the risk of occasional errors, judgments must become final at some definite point in time.**" (*Torres vs Aruego*. G.R. No. 201271, September 20, 2017)

The OGC did not err in taking cognizance of, and passing upon the issue on the Corporation's non-compliance with the RCC.

The Appeal is also dismissible not only on technical grounds but also for lack of merit.

Appellants maintained that the OGC erred in taking cognizance of the instant case which involved and presented an election contest. This, according to Appellants, is an intra-corporate dispute which is outside the jurisdiction of the Commission.[14] In support thereof, Appellants argued that the allegations in the Petition mentioned the commission of material falsehood in the GIS that was submitted,[15] and presented the issue on whether the elections for the years 2017-2018 were valid.[16] Appellants thus posited that the primary contentious issue is the validity and legality of the provision on proxy and the contested meeting and election of directors which are intra-corporate in nature as they involve devices and schemes employed by, or an act of the board or officers amounting to fraud.[17]

Appellants' arguments must fail as they are not supported by the evidence on record.

A meticulous review of the factual antecedents borne on the records of the case will show that the Petition alleged that the Corporation has failed to call and conduct its regular meetings and elections since 2006, and that the incumbent members of the board, who were apparently discharging their functions under a hold-over capacity, have allegedly committed abuses. It is in this context that the Petition prayed that the Corporation be directed to call and hold a meeting and election as mandated under its By-laws and the Corporation Code. Clearly, the main issue presented is not an election contest as what Appellants insist, but whether the Corporation has failed to comply with the provisions of the Corporation Code mandating the conduct of annual regular meeting. This is supported by the fact that during the preliminary conferences that were conducted, the parties were directed to substantiate their respective allegations relating to the holding of meeting and conduct of election. Thus, Appellants were specifically directed to present the Corporation's corporate secretary for purposes of testifying on the conduct of the meeting and electing, and to submit the minutes thereof.[18] The OGC

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[14] Paragraph 8 of the Appeal
[15] Pars. 12 and 14 of the Appeal
[16] Par. 13 of the Appeal
[17] Par. 17 of the Appeal
[18] See Pages 4-5 of the Decision

rendered a decision directing the conduct of meeting and election after finding that the Corporation has indeed failed to call and conduct its regular members' meeting in violation of the mandatory provisions of Section 50 of the Corporation Code.

On account thereof, the Commission holds that the OGC did not commit reversible error in taking cognizance of the instant case and in passing upon the issue on the Corporation's non-compliance with the mandatory provisions of Section 50 of the Corporation as the same is within the exclusive and primary jurisdiction of this Commission.[19]

In *Gamboa v. Teves*,[20] the Court ruled that the performance by the Commission of its regulatory functions to ensure compliance with laws, rules and regulations may be compelled by a *mandamus* in case it fails to perform the same, to wit:

> "This Court has held that the SEC "has both regulatory and adjudicative functions. **Under its regulatory functions, the SEC can be compelled by *mandamus* to perform its statutory duty when it unlawfully neglects to perform the same**. Under its adjudicative or quasi-judicial functions, the SEC can be also be compelled by *mandamus* to hear and decide a possible violation of any law it administers or enforces when it is mandated by law to investigate such violation." (Emphasis and underscoring supplied).

Moreover, this Commission particularly notes that the OGC identified the matters/issues raised by the parties which partook of the nature of an intra-corporate dispute, and categorically ruled that jurisdiction over the same is vested in the regular courts, hence, will not be considered in the decision. We quote the relevant portion of the Assailed Decision, thus:

> "Petitioners seek the nullification of Section 10, Article 10 of the Master Deed and Declaration on the ground that the requirement for unit owners to grant an irrevocable proxy for a period of ten (10) years from actual physical or constructive turn over of their respective units violates Section 58 of the Code which limits the validity of proxies to five (5) years.
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> The Office agrees with GA Tower 1 that the foregoing matter is not within the jurisdiction of the Commission, but with the regular courts. The power and authority to determine whether a contract or a document should be struck down as void for being contrary to law is vested in the regular courts of justice applying the general laws i.e. the Civil Code that do not require any particular expertise or training to interpret and apply.
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> xxx xxx xxx

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[19] Section 5(d) of the Securities Regulation Code
[20] G.R. No. 176579, June 28, 2011.

In a similar manner, the action seeking nullification of the election of directors or officers or their hold-over status should likewise be dismissed for being an intra-corporate dispute, the jurisdiction over which is now vested in the regular courts under Section 5.2 of the SRC."

On the basis thereof, We do not find any cogent reason to disturb the findings of the OGC in the absence of any proof showing that it committed error in applying the relevant laws, or abused its discretion.[21]

Moreover, we agree with the OGC that allegations of intra-corporate dispute in the Petition does not deprive the Commission of jurisdiction to take cognizance of a case and pass upon an issue that solely relates to the interpretation and implementation of the Corporation Code and other laws implemented by it. The OGC correctly cited and applied the doctrine in *Roman, Jr. v. Securities and Exchange Commission*[22] where the Supreme Court ruled that the Commission is not stripped-off its power to adjudicate matters which involves the implementation of the laws and rules despite the existence of intra-corporate controversies, thus:

"Under the SRC, jurisdiction on matters stated under Section 5 of P.D. No. 902-A, which was originally vested in the SEC, has already been transferred to the RTC acting as a special commercial court. Despite the said transfer, however, ***the SEC still retains sufficient powers to justify its assumption of jurisdiction over matters concerning its supervisory, administrative and regulatory functions***. In SEC v. Subic Bay Golf and Country Club, Inc. (SBGCCI) and Universal International Group Development Corporation (UIGDC), 24 for instance, the Court affirmed the SEC's assumption of jurisdiction over a complaint, which alleged that SBGCCI and UIGDC committed misrepresentations in the sale of their shares. The Court held in the said case that ***nothing prevented the SEC from assuming jurisdiction to determine if SBGCCI and UIGDC committed administrative violations and were liable under the SRC despite the complaint having raised intra-corporate issues. It also ruled that the SEC may investigate activities of corporations to ensure compliance with the law***.

In ruling that way, the Court cited Sections 5 and 53 of the SRC as justifications, to wit:

SECTION 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,

[21] Part V, Rule III, Section 3-11 of the 2016 Rules provides that factual findings of an operating department shall not be disturbed by the Commission unless there are serious errors, thus:

"SEC. 3-11. Review Standard - **Findings of fact** by the Operating Department, the Special Hearing Panel or the Self-Regulatory Organization **shall not be disturbed by the Commission En Banc, unless serious errors of fact have been committed.**" (Emphasis and underscoring supplied)

[22] G.R. No. 196329, June 1, 2016.

> Presidential Decree No. 902-A, the Corporation Code, the Investment Houses Law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:
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> (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;
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> (d) Regulate, investigate or supervise the activities of persons to ensure compliance;
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> (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.
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> xxx xxx xxx
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> SECTION 53. Investigations, Injunctions and Prosecution of Offenses. — 53.1. The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Code, any rule, regulation or order thereunder, or any rule of an Exchange, registered securities association, clearing agency, other self-regulatory organization, and may require or permit any person to file with it a statement in writing, under oath or otherwise, as the Commission shall determine, as to all facts and circumstances concerning the matter to be investigated. . . .

Beyond doubt, therefore, **is the authority of the SEC to hear cases regardless of whether an action involves issues cognizable by the RTC, provided that the SEC could only act upon those which are merely administrative and regulatory in character**. In other words, ***the SEC was never dispossessed of the power to assume jurisdiction over complaints, even if these are riddled with intra-corporate allegations, if their invocation of authority is confined only to the extent of ensuring compliance with the law and the rules, as well as to impose fines and penalties for violation thereof; and to investigate even motu proprio whether corporations comply with the Corporation Code***, the SRC and the implementing rules and regulations." (Emphasis and underscoring supplied)

The OGC did not err in holding that the case has already become moot and academic following the conduct of the annual meeting on 2 November 2020

Appellants finally assailed the finding of the OGC that the case has become moot and academic with the conduct of the annual meeting and election on 2 November 2020 (the "November Meeting and Election"), and the denial of the Motion for Reconsideration (the "Motion") on the basis thereof. Appellants argued that the November Meeting and Election is void and should be invalidated as the same was made pursuant to the Assailed Decision that has not yet attained finality.

In its Resolution, the OGC justified the denial of the Motion on the evidence presented by Appellees showing that the Corporation already conducted the November Meeting and Election, and ruled that the same was a supervening event that mooted the instant case as the issue on the Corporation's non-compliance with Section 50 of the Corporation Code has already been addressed. The OGC likewise held that validity of the November Meeting and Election which Appellants were questioning is an intra-corporate dispute, the jurisdiction over which belongs to the Regional Trial Court (RTC).

The Commission finds and so holds that the OGC did not commit reversible error in ruling that the matter relating to the validity of the November Meeting and Election is an intra-corporate dispute which is now within the exclusive jurisdiction of the RTC; and in dismissing the Motion on the basis of a finding that the November Meeting and Election has rendered the issues of the instant case moot and academic.

The OGC correctly ruled that the issue on whether the November Meeting and Election was valid is an intra-corporate dispute which is covered under Section 1 Rule I of the Interim Rules of Procedure for Intra-Corporate Controversies[23] considering that this conflict, which involves the members of

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[23] "SECTION 1. (a) Cases covered. – These Rules shall govern the procedure to be observed in civil cases involving the following:

1. Devices or schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association;
2. **Controversies arising out of intra-corporate**, partnership, or association relations, **between and among stockholders, members, or associates; and between, any or all of them and the corporation**, partnership, or association of which they are stockholders, members, or associates, respectively;

the Corporation, relates to the recognition and enforcement of their correlative rights under their constitutional documents and the Corporation Code. The issue on the validity of the November Meeting and Election thus satisfies the relationship test and nature of controversy test established in jurisprudence,[24] which is now under the jurisdiction of the RTC pursuant to Section 5.2 of the Securities Regulation Code.[25]

Moreover, We also hold that the OGC was correct in denying the Motion on the ground of mootness, the concept of which was explained by the Supreme Court in *Dominguez v. Manuela Corporation*[26], , thus:

> "A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. Consequently, there is **no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition**. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced." (Emphasis and underscoring supplied)

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3. **Controversies in the election or appointment of directors, trustees, officers, or managers of corporations**, partnerships, or associations;
4. Derivative suits; and
5. Inspection of corporate books." (Emphasis supplied) [A.M. No. 01-2-04 SC]

[24] The Court then combined the two tests and declared that jurisdiction should be determined by considering not only the status or relationship of the parties, but also the nature of the question under controversy. This two-tier test was adopted in the recent case of *Speed Distribution Inc. v. Court of Appeals:*

'To determine whether a case involves an intra-corporate controversy, and is to be heard and decided by the branches of the RTC specifically designated by the Court to try and decide such cases, two elements must concur: (a) the status or relationship of the parties, and (2) the nature of the question that is the subject of their controversy.

The first element requires that the controversy must arise out of intra-corporate or partnership relations between any or all of the parties and the corporation, partnership, or association of which they are not 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 the individual franchises. The second element requires that the dispute among the parties be intrinsically connected with the regulation of the corporation. If the nature of the controversy involves matters that are purely civil in character, necessarily, the case does not involve an intra-corporate controversy." (Real vs Sangu Philippines, Inc., G.R. No. 168757: January 19, 2011)

[25] "The Commission's jurisdiction over all cases enumerated in Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court; Provided, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra- corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed."

[26] G.R. No. 205545 (Notice), December 2, 2020.

The conduct of the November 2020 Meeting and Election is a supervening event that rendered the instant case moot and academic inasmuch as it rendered the Corporation compliant with requirement under Section 50 of the Corporation Code. The Commission's regulatory function in relation to Section 50 of the Corporation Code is limited to ensuring that corporations call and hold their regular meeting pursuant to their by-laws. Once this requirement is complied with, the issue on whether the said meeting is valid or not is already an intra-corporate dispute that is within the exclusive province of the RTC.

Thus, the OGC was correct in denying the Motion to Expunge filed by Appellants considering that the issue presented therein already relates to the validity of the November 2020 Meeting and Election, a matter which is not for the Commission to decide.

WHEREFORE, premises considered, the APPEAL MEMORANDUM filed by GA Tower 1 Condominium Corporation is hereby **DISMISSED** as the same was not perfected, and for lack of merit. The Assailed Decision and Resolution of the Office of the General Counsel is hereby **AFFIRMED**.

SO ORDERED.

Pasay City, Philippines; 8 February 2022.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner