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

IN THE MATTER OF:

SEC *En Banc* Case No. 10-22-508
Promulgated: 22 November 2022

TORRE CIUDAD REALTY CORP.
(*Company Registration No. CS200501105*)
Petitioner/Appellant.
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DECISION

Before the Commission is the Appeal dated 29 September 2022 (the "Appeal"), filed on 4 October 2022 by Petitioner-Appellant TORRE CIUDAD REALTY CORP., (the "Appellant"), praying for (a) the reversal and setting aside of the Order dated 16 September 2022 (the "Assailed Order") issued by the Company Registration and Monitoring Department (CRMD), and (b) the issuance of a new order granting the Petition to Correct Articles of Incorporation.

THE RELEVANT FACTS

The Appellant is a domestic corporation duly organized and existing under Philippine laws, having been issued a Certificate of Registration with Company Registration No. CS200501105 on 26 January 2005.

On 14 June 2021, the Appellant filed with the CRMD a Petition for Correction of Articles of Incorporation (the "Petition"), therein praying for the issuance of an order granting the change in the Tax Identification Number of Marina L. Peralejo (Ms. Peralejo).

Acting on the Petition, the CRMD issued a Show Cause Order on 5 July 2022, directing the Corporation to explain why its Certificate of Incorporation should not be revoked on the ground that the same was fraudulently procured. The Appellant failed to submit a written explanation.

Thus, on 16 September 2022, the CRMD issued the Assailed Order denying the Petition, and directing the cancellation of the Appellant's

Certificate of Incorporation (the "Certificate") for violation of Section 16 of the Revised Corporation Code and SEC Memorandum Circular No. 20 series of 1999 (MC 20), in relation to Section 236(j)(5) of the National Internal Revenue Code (NIRC).

On 4 October 2022, the Appellant filed the instant Appeal where it alleged that the CRMD committed reversible error in cancelling its Certificate, arguing that the use by Marina L. Peralejo of the TIN of her husband in the Articles of Incorporation (AOI) was an honest mistake, and was not fraudulent. In support thereof, the Appellant proffered the following circumstances that made such an honest mistake possible *i.e.* Ms. Peralejo was already 79 years of age when the AOI was executed, and she was jointly filing her Income Tax return with her husband which increased the likelihood that she or her secretary might have mistaken her husband's TIN as that of herself. The Appellant maintained that not all entry of wrong information due to mistake is a fraud, and considering that what Ms. Peralejo mistakenly used was her husband's TIN, the same cannot be considered as fictitious that will warrant the cancellation of its AOI.

On 25 October 2022, the CRMD filed its Comment reiterating its position that the revocation of the Certificate of Appellant was proper. In support thereof, the CRMD reiterated that the change of entries in the AOI is allowed only for typographical error, and not when an incorporator uses the TIN of another person as the same constitutes fraud which warrants the revocation of a corporation's charter.

ISSUE

Whether the use by Ms. Peralejo of the TIN of her husband in the AOI constitutes fraud as to warrant the revocation of the Certificate of Incorporation of Appellant.

RULING

We grant the Appeal.

The issue presented in the instant case involves the proper interpretation and implementation of fraud in the procurement of the certificate of registration which in the instant case, was construed by the CRMD to include all cases where a person inadvertently/mistakenly uses a TIN of a family member as his/her own in the AOI.

In the instant case, the CRMD did not only deny the Petition for Correction of the TIN of Ms. Peralejo which was voluntarily filed with the Commission, but it also proceeded to cancel the Certificate of Incorporation of Appellant on the ground of fraud in its procurement. The CRMD held that a change of entry in the AOI is allowed only if what is sought to be corrected are typographical errors which are visible to the eyes or obvious to the understanding, and can be effected by reference to an existing record(s). On account thereof, the CRMD ruled that the use and submission by Ms. Peralejo of the TIN of her husband was not a typographical error, but a fraudulent statement of her TIN in the AOI. The CRMD is in effect saying that the certificate of incorporation of any and all corporations (and all existing corporations) that have, or might have submitted a wrong TIN, should be revoked, regardless of the circumstances and reasons as the same is not considered a mere typographical error.

We do not subscribe to the position of the CRMD.

This Commission has consistently held that for purposes of Section 6(i)(1) of P.D. 902-A, fraud as a ground for the revocation of a certificate of registration refers to fraud attendant in the registration, and must be contained or connected with the documents or papers presented to the Commission for purposes of registration. The use of the word "fraud" in its generic and unqualified sense means that it includes not only actual fraud but also, by reason of public policy, includes constructive fraud.[1]

Over the years, a considerable number of corporations that were created using falsified documents/information have prejudiced the investing public and to a certain extent, the economy; and jurisprudence will attest to the fact that the Commission has not shirked from its duty of imposing upon these corporations the ultimate penalty of revocation of their corporate franchises to protect the investing public.

In one case, the revocation of the certificate of incorporation of a condominium corporation on the basis of a finding that almost all of its

[1] "Fraud can be classified as either actual or constructive. Actual or positive fraud proceeds from an intentional deception practiced by means of the misrepresentation or concealment of a material fact. Constructive fraud is construed as a fraud because of its detrimental effect upon public interest, and public or private confidence, even though the act is not done with an actual design to commit positive fraud or injury upon other persons. Since Section 6(i)(1) of PD 902-A simply speaks of fraud without limiting its use of the term, then the section must include not only actual fraud, but constructive fraud as well. Since the provision is not concerned with a crime or a felony, criminal intent or intent to deceive is not essential. Consequently, even assuming that incorporators Evita and Solivio were in good faith does not detract from the undisputed commission of the falsity when they used fictitious names in petitioner's Articles of Incorporation." (*Care Best International, Inc. vs Securities and Exchange Commission*, GR No. 215510. October 5, 2015)

incorporators (who were required under its AOI to be unit owners) were not unit owners, was sustained by the Supreme Court. Here the inclusion of non-unit owners as incorporators was considered by the Supreme Court as covered by the concept of fraud in the procurement of the certificate of incorporation because it defrauded the members who were led to the belief that they were qualified to be incorporators and manage the corporation.[2] In another case, the Commission revoked the certificate of incorporation of a realty corporation after finding that one of its incorporators, who subscribed to 99% of its authorized capital stock, was already dead when the incorporation documents were submitted for approval. The Commission held that the inclusion of the name of a dead person in the AOI constituted fraud and misrepresentation because the other incorporators were fully aware of such fact when the application for incorporation was filed.[3] Moreover, in Care Best International, Inc. vs SEC[4], the Supreme Court sustained the revocation of the certificate of incorporation of a corporation on the basis of a finding that three (3) of its incorporators did not use their real names in the AOI, and affirmed the *ratio decidendi* of Court of Appeals that such act rendered it difficult, if not impossible for the Commission to determine if the requirements of Section 10 of the Corporation Code were complied with. Such act, according to the Court, tended to confuse and defeat whatever claims the other corporate stakeholders, including the general public, may have against them, and thus effectively placed the authenticity of the AOI under a "cloud of doubt".

From the foregoing catena of cases, it can readily be deduced that the clear purpose and policy of the law in including fraud in the procurement of the certificate of incorporation as a ground for the revocation of a corporation is to ensure that no fictitious, bogus or sham corporation is created and/or allowed to operate, for the protection of the investing public. The evil that the law seeks to prevent and/or curtail is the establishment and operation of corporations for nefarious purposes, which is made possible and carried out through the submission of falsified documents and/or false or misleading information.

More importantly, the mandate of the Commission in encouraging the widest participation of ownership in enterprises, enhancing the democratization of wealth, promoting the development of the capital market, and protecting investors[5], should always be the context in interpreting what fraud in the procurement of the certificate of

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[2] *Skyworld Condominium Owners Association, Inc. vs Securities and Exchange Commission* (G.R. No. 95778, July 17, 1992)
[3] *Esmar Posadas realty Corporation vs Dir. Ferdinand B. Sales* (SEC En Banc Case No. 08-13-298)
[4] G.R. No. 215510, March 16, 2015
[5] See Section 2 of the Securities Regulation Code

registration should cover, otherwise we will lose sight of, and fail to implement the intent and objective of the law. Stated otherwise, an interpretation that will foil the implementation of the said state policies should not be countenanced.

In the instant case, we take cognizance of the fact that it was the Appellant that voluntarily informed the Commission of the error in the TIN of Ms. Peralejo, and sought its rectification. The Appellant presented reasons that made possible and/or contributed to the submission of the wrong TIN i.e. *i.e.* Ms. Peralejo was already 79 years of age when the AOI was executed; as a housewife, she jointly filed her Income Tax return with her husband; and it was the secretary that prepared the AOI which she just signed. Ms. Peralejo has her own TIN which is now being voluntarily provided by the Appellant to the Commission after it was noticed that she was assigned the TIN of her husband in the AOI. To the mind of the Commission, it makes no sense that Ms. Peralejo who has her own TIN will intentionally (or will even agree had she been fully informed) use his husband's TIN instead of her own in the AOI of Appellant; and the erroneous assignment and use by Ms. Peralejo of the TIN of Mr. Cesar Peralejo Sr. could have probably been brought about by the circumstances alleged in the Petition.

We also note based on the records of the Commission which we can take administrative notice of, that Appellant is a going concern and has no derogatory record. Furthermore, the financial records of the Appellant on file with the Commission show that its financial health has continued to improve.

The foregoing factual circumstances heavily militate against a decision that puts an end to the corporate life of a corporation that is fully operational and viable, in a good financial state, and, in all probability, will contribute to the development of the national economy. The use by Ms. Peralejo of the TIN of her husband in the AOI of the Appellant through honest mistake does not merit the ultimate penalty of revocation of the Appellant's primary franchise, and We hold that in the context of the attendant circumstances, which are supported by substantial evidence, this does not constitute fraud in the procurement of the certificate contemplated under PD 902-A.

It bears emphasis that in our jurisdiction, the prevailing rule is that the drastic remedy of dissolving a corporation or revoking a franchise must be exercised with great caution[6] and that all remedies must be

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[6] 16A Fletcher *Cyc Corp* [Perm Ed] sec. 8035 at p. 155

exhausted before imposing the harsh penalty of dissolution/revocation. The foregoing rule was applied and reiterated by the Commission in the case of *Marbel Institute of Technical College, et al. vs. Agapito Lubaton, et al.*[7], where we held that revocation will only be resorted to if all available remedies have already been exhausted, to wit:

> "Finally, the Commission has consistently ruled that not every casual infraction would be a valid ground for revocation. The **drastic remedy of dissolving a corporation must be exercised with great caution and not in doubtful cases. Revocation will only be resorted if all the available remedies have been exhausted**. In the instant case, Petitioner's allegation and evidence does not warrant the revocation of Respondents Marbel and Marvelous' Certificate of Incorporation. xxx." (Emphasis supplied)

In another case where the Commission reiterated the rule and importance of affording the erring corporation an opportunity to correct the misdeed, if there are other remedies available, before imposing the penalty of dissolution was emphasized, to wit:

> "The drastic remedy of dissolving a corporation must be exercised with great caution and not in doubtful cases. This holds true in case where an individual's interest and not of the public is involved. In any event, all remedies must be exhausted before imposing the harsh penalty of dissolution. **Also, the corporation must be given an opportunity to correct any misdeed or comply with the law** since a dissolution will not be decreed unless no other adequate remedy is available."[8] (Emphasis supplied)

A corporation which has discovered a wrong entry in its AOI has voluntarily informed the Commission of such fact and took the initiative to have the same rectified, as what happened in the instant case, deserves a chance to have its corporate document(s) corrected, instead of being immediately revoked. We hold that this is not the intent of Section 6(i)(1) of P.D. 902-A. Relative thereto, the old case of *Government of the Philippine Islands v. El Hogar Filipino*[9] is instructive and applicable, to wit:

> "Upon consideration of the facts above set forth it is evident that the strict letter of the law was violated by the respondent; but it is equally obvious that its conduct has not been characterized by obduracy or pertinacity in contempt of the law.
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> **This provision clearly shows that the court has a discretion with respect to the infliction of capital punishment upon corporations**

[7] SEC Case No. 05-09-0336, October 18, 2016.
[8] In the Matter of the Petition for Involuntary Dissolution of Starconnection, Inc., SEC Case No. 06-09-271, January 7, 2010.
[9] G.R. No. 26649, [July 13, 1927]

> **and that there are certain misdemeanors and misusers of franchises which should not be recognized as requiring their dissolution.** In Government of the Philippine Islands vs. Philippine Sugar Estates Development Co. (38 Phil., 15), it was found that the offending corporation had been largely (though indirectly) engaged in the buying and holding of real property for speculative purposes in contravention of its charter and contrary to the express provisions of law. Moreover, in that case the offending corporation was found to be still interested in the properties so purchased for speculative purposes at the time the action was brought. Nevertheless, instead of making an absolute and unconditional order for the dissolution of the corporation, the judgment of ouster was made conditional upon the failure of the corporation to discontinue its unlawful conduct within six months after final decision. In the case before us the respondent appears to have rid itself of the San Clemente property many months prior to the institution of this action. It is evident from this that the dissolution of the respondent would not be an appropriate remedy in this case. We do not of course undertake to say that a corporation might not be dissolved for offenses of this nature perpetrated in the past, especially if its conduct had exhibited a willful obduracy and contempt of law. **We content ourselves with holding that upon the facts here before us the penalty of dissolution would be excessively severe and fraught with consequences altogether disproportionate to the offense committed.**" (Emphasis supplied)

On the basis of the foregoing, this Commission holds that the Assailed Order of the CRMD departed from the existing rules and policies of the Commission. Given the attendant circumstances, the penalty of revocation which the CRMD imposed upon the Appellant is harsh and should not be sustained for being devoid of basis. It should be emphasized that these rules and policies are in place to ensure that existing corporations that have shown to have consistently complied with applicable laws, rules, and regulations, are given an opportunity to rectify a wrong which has not prejudiced the public, instead of being outrightly meted with the supreme penalty of revocation. If at all, it is in the best interest of the State that corporations which are going concerned be given an opportunity to rectify a mistake and continue contributing to the development of the economy. In the instant case, the act of the Appellant in voluntarily informing the Commission of the mistake in the TIN of Ms. Peralejo, and in requesting for its correction will in fact do good to the public who are dealing with the Appellant, as they will be apprised of the correct TIN of Ms. Peralejo. This initiative is consistent with the principle of full disclosure embodied in the SRC, which this Commission should encourage and support.

The CRMD also ratiocinated in support of its decision to cancel the certificate of incorporation of Appellant, that the act of Ms. Peralejo in using the TIN of her husband rendered the same fictitious and violated MC 20 in relation to EO 98 series of 1999 and the NIRC.

The Commission does not agree.

A careful reading of the MC 20 shows that what is simply required of applicant corporations is the provision and submission of TIN, a mechanism to assist in the effective collection of taxes, and that non-compliance with such requirement will justify the refusal to accept any application. In the instant case, the Appellant fully complied with this requirement although because of an honest mistake, Ms. Peralejo was assigned and/or used the TIN of her husband in the AOI of the Appellant. This resulted in the acceptance, processing, and approval by the Commission of Appellant's application for incorporation.

WHEREFORE, premises considered, the Appeal dated 29 September 2022 filed by Torre Ciudad Realty Corp. is hereby **GRANTED**. The Order dated 16 September 2022 is hereby **REVERSED AND SET ASIDE**. The Company Registration and Monitoring Department is hereby **DIRECTED** to give due course to the Petition for Correction of TIN filed by Torre Ciudad Realty Corp.

SO ORDERED.

Makati City, Philippines.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE*
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner

*On Official Business