



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

12 August 2011

SEC-OGC Opinion No. 11-35
Re: Membership in Condominium Corporation;
Merger

SALONGA, HERNANDEZ & MENDOZA
3/F Tower B, Gold Loop Towers, I Gold Loop Square,
Ortigas Center, Pasig City

Attention: Atty. Roberto L. Mendoza

Gentlemen:

This refers to your 3 March 2011 letter requesting opinion on membership in LV Locsin Condominium Corporation ("LV Locsin", for brevity).

You mentioned that title to one of LV Locsin's condominium units is registered in the name of Equitable PCI Banking Corporation ("EPCIB"), which merged with Banco de Oro Corporation ("BDO"). According to you, BDO, as the surviving corporation, now seeks to be recognized as the new member of LV Locsin, pursuant to the Articles of Merger.

Thus, you ask:

1. Whether BDO should effect the transfer of the condominium certificate of title in its name with the Register of Deeds before it can enjoy the status of a unit-owner.
2. Stated differently, whether BDO, as the surviving corporation, can be automatically considered as a member of the condominium corporation, pursuant to Section 80 of the Corporation Code ("the Code").

Section 10 of the Condominium Act¹ provides:

"Sec. 10 . . . Membership in a condominium corporation, regardless of whether it is a stock or non-stock corporation, shall not be transferable separately from the condominium unit of which it is an

¹Republic Act No. 4726.

appurtenance. When a member or stockholder ceases to own a unit in the project in which the condominium corporation owns or holds the common areas, he shall automatically cease to be a member or stockholder of the condominium corporation."

Thus, shareholding or membership in a condominium corporation is inseparable from the unit to which it is only appurtenant, and that only the owner of a unit is a shareholder or member in a condominium corporation. In fine, ownership of a unit is a condition *sine qua non* to being a shareholder or member in the condominium corporation.²

Section 4 of the Condominium Act leaves to the Master Deed the determination of when the shareholding or membership in the condominium corporation will be transferred to the purchaser of a unit.³ The same provision likewise allows the Master Deed to provide any reasonable restriction not contrary to law, morals, or public policy regarding the right of any condominium owner to alienate or dispose of his condominium unit.

At this juncture, we would like to note that to answer your query would require a determination of ownership of the condominium unit in question, and, consequently, of one's status as member of the condominium corporation. Due to this, we cannot give a categorical and/or definitive opinion on the matter because as a matter of policy, the Commission refrains from rendering opinion where the resolution of the question(s) would involve the substantive and contractual rights of private parties who would, in all probability, contest the same in court if the opinion turns out to be adverse to their interest.⁴ Nor does the Commission render opinion on matters that would necessitate the determination of factual issues⁵, or that would necessarily require a review and interpretation of contracts, since this is justiciable in nature and contract review calls for legal examination of contract on a general basis and not on specific legal issues.⁶ However, for your guidance and for purposes of information only, the following are imparted.

As to when and under what conditions ownership of a unit is acquired, Subparagraph (a) of Part I, Section 6, of LV Locsin's Master Deed provides, thus:

"(a) The purchaser of a Unit shall acquire title to or ownership of such Unit, **subject** to the terms and conditions of the instrument conveying the Unit from the DEVELOPER to such purchaser and **to the terms and conditions of any subsequent conveyance under which the purchaser takes title to the Unit**, and subject further to this Master Deed with Declaration of Restrictions; xxx." (Emphasis ours)

²Sunset View Condominium Corporation vs. Campos, et al., G.R. Nos. 52361 and 52524, 27 April 1981.

³Ibid.

⁴SEC Memorandum Circular No. 15, Series of 2003, par. 5.2.

⁵Ibid, par. 5.8.

⁶Ibid, par. 5.3.

Thus, in one case⁷, the Supreme Court, using as basis a provision in a condominium corporation's Master Deed that is substantially similar to the above – quoted subparagraph (a) of Part I, Section 6, of LV Locsin's Master Deed, held that since the instrument conveying the unit is a mere Contract to Buy and Sell, the purchaser of the unit is not yet the owner thereof, not having fully paid the purchase price, and hence, cannot become a shareholder of the condominium corporation.

In the case at bar, the transfer or conveyance of EPCIB's unit in LV Locsin to BDO was made through the merger of EPCIB with BDO.

Section 80 of the Code provides:

"Sec. 80. *Effects of merger or consolidation.* – The merger or consolidation, as provided in the preceding sections, shall have the following effects:

xxx xxx xxx

4. xxx; and **all property, real or personal**, and all receivables due on whatever account including subscriptions to shares **and other interest of**, or belonging to, or due to each constituent corporation, **shall be taken and deemed to be transferred to and vested in such surviving or consolidated corporation without further act or deed**; xxx." (Emphasis ours).

Merger as actually observed and practiced in the Philippines necessitates a transfer of all assets and the assumption of debts and liabilities of the absorbed corporation by the acquiring corporation. In return for the transfer of all assets and assumption of the liabilities of the absorbed corporation, the acquiring entity issues a block of shares equal to the net asset value transferred, which stocks are in turn distributed to the stockholders of the absorbed corporation.⁸ The Commission shall issue a certificate of merger, at which time the merger shall be effective, if it is satisfied that the same is not inconsistent with the provisions of the Code and existing laws.⁹

As to registration with the Register of Deeds, P.D. No. 957 (Regulating the Sale of Subdivision Lots and Condominiums, Providing Penalties For Violations Thereof), provides:

"SECTION 25. Issuance of Title. — The owner or developer shall deliver the **title of the lot or unit** to the buyer upon full payment of the lot or unit . . ." (Emphasis supplied)

⁷Supra, Note 2.

⁸Hector S. De Leon, *The Corporation Code of the Philippines Annotated* 561 (1993), citing SEC Opinion dated 9 November 1961.

⁹Corporation Code, Section 79.

On the other hand, Section 18 of the Condominium Act provides:

"Sec. 18. Upon registration of an instrument conveying a condominium, the Register of Deeds shall, upon payment of the proper fees, enter and annotate the conveyance on the certificate of title covering the land included within the project and the transferee shall be entitled to the issuance of a 'condominium owner's' copy of the pertinent portion of such certificate of title. Said 'condominium owner's' copy need not reproduce the ownership status or series of transactions in force or annotated with respect to other condominiums in the project. A copy of the description of the land, a brief description of the condominium conveyed, name and personal circumstances of the condominium owner would be sufficient for purposes of the 'condominium owner's' copy of the certificate of title. No conveyance of condominiums or part thereof, subsequent to the original conveyance thereof from the owner of the project, shall be registered unless accompanied by a certificate of the management body of the project that such conveyance is in accordance with the provisions of the declaration of restrictions of such project." (Emphasis supplied)

A transfer of shares of stock not recorded in the stock and transfer book of the corporation is non-existent as far as the corporation is concerned. As between the corporation on the one hand, and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are. It is only when the transfer has been recorded in the stock and transfer book that a corporation may rightfully regard the transferee as one of its stockholders. This is the import of Section 63 of the Code which states that *"No transfer, however, shall be valid, except between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred."*¹⁰

Thus, membership in a condominium corporation is evidenced by a Condominium Certificate of Title ("CCT") issued upon full payment of the unit.¹¹ The presumption is that holders of duly issued CCT are considered members of the condominium corporation.¹²

As you represented, there is a CCT covering subject unit, albeit it is still in the name of EPCIB, not that of BDO.

In this connection, please note Section 3, Article II of the By-Laws of LV Locsin, which states:

"Section 3. Certificates of Membership. Each unit owner shall be issued a certificate of membership which shall be in such form as the

¹⁰Vicente Ponce vs. Alsons Cement Corp., et al., G.R. No. 139802, 10 December 2002.

¹¹SEC-OGC Opinion No. 31-03 dated 26 May 2003 addressed to Jose Oscar M. Salazar.

¹²SEC Opinion dated 2 October 1992 addressed to Atty. Angel R. Quimpo.

Board of Director may determine and prescribe. It shall be signed by the President or Vice President and countersigned by the Secretary or an Assistant Secretary and sealed with the corporate seal. xxx.

A unit owner, upon the sale, transfer, conveyance or disposition of his unit, shall surrender to the Secretary for cancellation his certificate of membership. A new certificate shall thereupon be issued by the Secretary to the purchaser or transferee of the unit.

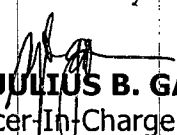
A member shall notify the Corporation of the loss, destruction or mutilation of his certificate of membership, and the Board of Directors may cause to be issued to him a new certificate of membership upon the surrender of the mutilated certificate or in case of loss or destruction, upon satisfactory proof of such loss or destruction."

Considering all of the foregoing, especially the fact that membership in a condominium corporation is inseparable from ownership of a condominium unit, the Board of Directors of LV Locsin can reasonably be expected to require, as it should, proof of ownership of BDO of the unit, before issuing a certificate of membership in the corporation in favor of BDO.

This opinion is based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein. It shall likewise be understood that the foregoing shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts.¹³ If, upon investigation, it will be disclosed that the facts relied upon are different, this Opinion shall be rendered void.

Please be guided accordingly.

Very truly yours,


VESPER JULIUS B. GARCIA
Officer-In-Charge

¹³Supra, Note 4, par. 7.