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

In the matter of:

Hj. MAULANA M. OMAR, KALIBE A. DALUS, and the Estate of HARUN L. DEMARUNSING rep. by ARQUIN L. DEMARUNSING
Complainants-Appellees,

- *versus* -

Z.C. INTEGRATED PORT SERVICES, INC. (SEC Reg. No. CS200525520), EDWIN JOSEPH G. GALVEZ in his capacity as Chairman, and MARVEE M. ESPEJO, in his capacity as President
Respondents-Appellants.

SEC EB Case No. 07-22-503
For: Violation of Right to Inspection and/or Reproduction of Corporate Records
Promulgated: 25 July 2023

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DECISION

Before the Commission En Banc is the Appeal Memorandum dated 04 July 2022 (the "Appeal") filed by **Z.C. INTEGRATED PORT SERVICES, INC.** (the "Corporation"), praying for the reversal and setting aside of the Final Order dated 20 April 2022 (the "Final Order") issued by the Securities and Exchange Commission-Zamboanga Extension Office (the "Zamboanga EO"), which was affirmed by the subsequent Order (Motion for Reconsideration) dated 22 June 2023 (the "Assailed Resolution") issued by the Zamboanga EO, the respective dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Respondents are hereby ordered, within THIRTY (30) DAYS from receipt hereof, to allow the Complainants to inspect and/or reproduce the Joint Venture Agreement between Respondent Corporation and HCPHI as well as any

minutes of meetings or board resolutions relative thereto, such as the minutes and resolutions passed during any meeting or meetings where such Joint Venture Agreement was deliberated and/or approved. Respondents are likewise ordered, within the same period, to allow the Complainants to inspect and/or reproduce Respondent Corporation's books of accounts where transactions involving Respondent Corporation's participation in its joint venture with HCPHI are recorded. No pronouncement as to the administrative liability of Respondents is made as their hesitation may have been due to the apparently improper inclusion of records and documents not forming part of the corporate records of Respondent Corporation. Finally, both parties are reminded to comply with Sec. 10 of SEC Memorandum Circular No. 25, Series of 2020 and to file their Verified Status Account (VSA) within the period stated in the said provision."

"**WHEREFORE**, premises considered, Respondent's Motion for Reconsideration dated April 27, 2022 is hereby denied and the Final Order of April 20, 2022 is hereby upheld. The parties are again reminded to file their respective Verified Status Account, this time in accordance with the 2nd paragraph of Sec. 10, SEC Memorandum Circular No. 25, Series of 2020."

PARTIES

Appellant Corporation is a corporation duly organized and existing under Philippine laws, with an address at Port Area, Zamboanga City. Appellant Corporation is joined by Edwin Joseph B. Galvez and Marvee M. Espejo (the "Individual Appellants") in their capacity as Chairman and President, respectively.

Appellees Hj. Maulana M. Omar ("Omar"), Kalbie A. Dalus ("Dalus"), and the Estate of Harun L. Demarunsing, who are represented in the instant case by Arquin L. Demarunsing, are stockholders of the Appellant Corporation.

RELEVANT FACTS

On 14 August 2021, Appellees sent a letter dated 11 August 2021 requesting a meeting and for relevant documents from Appellants which the latter allegedly failed to act upon.[1]

The Appellees sent a letter dated 09 December 2021 to the Individual Appellant, requesting that they be allowed to inspect and make copies of the corporate books and records of the Corporation, particularly the books of accounts and corporate records of board

[1] *Comment to Respondent-Appellants' Appeal Memorandum* dated 20 September 2022. Par. 12; see also Annex "B"

resolutions and/or minutes that are related to or connected with the Joint Venture and the contracts, on 15 December 2021.[2]

In a letter dated 14 December 2021, Appellants, through counsel, requested for the deferment of the inspection of the corporate books and records to "early next year" on the ground that ZCIPSI has allegedly ceased its operations at the Port Area of Zamboanga City, and it will need the services of an auditor to prepare and finalize the books and records.[3]

On 18 December 2021, Appellees sent another letter dated 17 December 2021 reiterating their request to be allowed to inspect and make copies of the corporate records on 23 December 2021.[4] In response thereto, Appellants sent a letter dated 22 December 2021 informing Appellees that they will not be able to provide the requested books and records on the desired schedule, but manifested therein that *"the company will inform you immediately of the available schedule for inspection next month"*.[5]

Unknown to Appellants, herein Appellees already filed a *Verified Complaint* (the "Complaint") with the Zamboanga EO on 18 January 2022, therein alleging that the Individual Appellants, through their counsel, denied their request to inspect and reproduce the books and records of the Appellant Corporation.[6] Appellees alleged that the denial of their request was made on the basis that the Corporation ceased its operations at the Port Area of Zamboanga City, the necessity to obtain the services of an auditor to prepare the books and records, and the lack of available personnel of the Corporation to assist the Appellees.

In their *Verified Answer* (the "Answer"), the Appellants prayed for the dismissal of the Complaint for lack of jurisdiction, arguing that under Rule 1, Section 1 in relation to Section 5 of the Interim Rules of Procedure for Intra-Corporate Controversies, issues involving the inspection of corporate books are under the jurisdiction of the Regional Trial Court. Appellants equally maintained that they should not be held liable for the alleged violation of the right of the Appellees to inspect and/or reproduce the corporate records of the Corporation as they did not deny the request of the Appellant to inspect the corporate records. Instead, they merely proposed a rescheduling of the conduct of inspection.[7] Appellants also proffered the following grounds that warrant the dismissal of the

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[2] *Verified Complaint.* Par. 1, page 1
[3] *Par. 2, 2.1 of the Answer*
[4] *Ibid.* Par. 2
[5] *Verified Answer* dated 28 January 2022. Par. 5.4
[6] *Verified Complaint.* Par. 2, No. 6, page 2 and 3
[7] *Verified Answer* dated 28 January 2022. Pars. 2.1 and 11

Complaint: (a) the purpose of the request for inspection is not germane to the interest of Appellant Corporation or to their interests as stockholders; (b) the implementation of precautionary measures to avoid the spread of COVID-19, as well as the onset of the holiday season[8]; (c) the need for Appellant Corporation to vacate its office at the Port Area, with the assumption by the new operator of its functions as the new port operator, which Appellees were allegedly aware of[9]; and (d) the employees and officers who will accompany the Appellees in inspecting the records will be coming from Manila. The foregoing, according to Appellants, justifies the rescheduling/deferment of the conduct of inspection to the following month.[10]

On 17 June 2022, the Appellants received a copy of the Final Order issued by the Zamboanga EO where the Appellant was ordered to allow the Appellees to conduct inspection and/or reproduce the corporate records requested.

On 04 May 2022, Appellants filed a Motion for Reconsideration reiterating the allegations and arguments in their Answer, which was denied by the Zamboanga EO in the Assailed Resolution.

The Appellants forthwith filed the instant Appeal.

On 10 October 2022, the Appellees filed their Comment to Respondent-Appellants' Appeal Memorandum dated 20 September 2022, praying for the dismissal of the Appeal for lack of merit. Appellees alleged that they would have deferred their request for inspection had the Appellants provided justifiable reason to do so.

The Parties thereafter filed their respective Position Papers which essentially reiterated the allegations and arguments contained in their previous pleadings.

ISSUE

The main issue presented for the determination of the Commission is whether the Zamboanga EO made a reversible error in finding that Appellants denied Appellees the exercise of the right to inspect the corporate books and records of the corporation, and in order the former to allow the inspection.

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[8] *Ibid.* Pars. 6 to 8
[9] Par. 22 of the Answer
[10] Par. 23 and 24 of the Answer

RULING

After a careful review of the allegations and the evidence presented by the parties, this Commission finds the Appeal to be impressed with merit.

At the outset, the Commission deems it necessary to address the issue presented by Appellants in their Verified Answer that the matter subject of the instant case i.e. inspection of books and records, is outside the jurisdiction of the Commission, arguing that the matter subject of the Complaint partakes of the nature of an intra-corporate dispute disguised as a simple violation of the right to inspect and/or reproduce corporate documents.[11] Appellants are in effect arguing that notwithstanding the enactment of the Revised Corporation Code ("RCC"), the provisions of the A.M. No. 01-2-04-SC specifically with respect to the inspection of corporate books remained with the RTC.

In the Philippines, it is settled in law and jurisprudence that nothing is as elementary as the concept of jurisdiction, for the same is the foundation upon which the courts exercise their power of adjudication, and without which, no rights or obligation could emanate from any decision or resolution issued by a court or quasi-judicial body. In *Mitsubishi Motors Philippines Corporation vs Bureau of Customs*[12], the Court reiterated the foregoing principle, to wit:

> "Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action." (Emphasis supplied)

It is thus imperative for a court or administrative agency to determine at the outset, if it has jurisdiction over an action filed with it, and to act on the same only after ascertaining there is a positive law granting such jurisdiction. To do otherwise would render both the proceedings and the decision, resolution or judgment issued relative

[11] Verified Answer dated 28 January 2022. Pars. 45 and 28
[12] G.R. No. 209830, June 17, 2015

thereto, a total nullity. This doctrine was emphasized by the Supreme Court in *Bilag vs Ay-ay*[13], to wit:

> "A judgment rendered by a court without jurisdiction is null and void and may be attacked anytime. It creates no rights and produces no effect. It remains a basic fact in law that the choice of the proper forum is crucial, as the decision of a court or tribunal without jurisdiction is a total nullity. A void judgment for want of jurisdiction is no judgment at all. All acts performed pursuant to it and all claims emanating from it have no legal effect."

Applying the afore-quote doctrines, We hold that the SEC Zamboanga correctly took cognizance of the instant case because Section 187 of the RCC repealed not only Batas Pambansa Blg. 68, but also A.M. No. 01-2-04-SC which partakes of the nature of a rule, to wit:

> "Batas Pambansa Blg. 68, otherwise known as "The Corporation Code of the Philippines", is hereby repealed. **Any law**, presidential decree or **issuance**, executive order, letter of instruction, administrative **order, rule or regulation contrary to or inconsistent with any provision of this Act is hereby repealed or modified accordingly**." (Emphasis supplied)

Pursuant to, and applying the afore-quoted provision, Section 1(a)(5) of A.M. No. 01-2-04-SC which placed the inspection of corporate books under the jurisdiction of the RTC, being an intra-corporate dispute, has been repealed by the RCC as it is contrary to and inconsistent with Section 73 thereof which expressly grants the Commission the jurisdiction, as well as the power and authority to act and pass upon a matter relating to the exercise of the right to inspect, thus:

> "If the corporation denies or does not act on a demand for inspection and/or reproduction, the aggrieved party may report such denial or inaction to the Commission Within five (5) days from receipt of such report, the Commission **shall conduct a summary investigation and issue an order directing the inspection or reproduction of the requested records.**" (Emphasis supplied)

In the case of *Mecano vs Commission on Audit*[14], the Supreme Court ruled, that while as a general rule, a repeal by implication is frowned upon, the same will nonetheless be recognized and given effect if there is a clear showing on the part of the lawmaker that the intent in enacting the new law was to abrogate the old one a portion thereof. This intent is recognized in jurisprudence as present if the provisions in the two acts

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[13] G.R. No. 189950, April 24, 2017
[14] G.R. No. 103982. December 11, 1992

on the same subject matter are in an irreconcilable conflict, in which case, the later act, to the extent of the conflict, constitutes an implied repeal of the earlier one.

More importantly, it should be stressed that in *Valdez vs Tuason*[15], the Supreme Court categorically laid down the rule that there is implied repeal when the repeal provision in the later law is expressed in the form of a universal negative which has the effect of repealing all conflicting provisions of the earlier law, thus:

> "We are not oblivious of the well-known rule of law that repeals by implication are not favored. **Nevertheless, when there is a plain, unavoidable, and irreconcilable repugnancy between two laws the later expression of the Legislative will must be give effect. It is axiomatic in the science of jurisprudence that two inconsistent statutes cannot co-exist in one jurisdiction with reference to the same subject-matter**.
>
> **The most powerful implication of repeal noted by legal commentators is that which arises when the later of two laws is expressed in the form of a universal negative. The repugnance of two statutes is more readily seen when the later Act is in the form of a negative proposition** than when both laws are stated in the affirmative. Indeed, most of the discussion found in the books on the question whether one law impliedly repeals another is concerned with the interpretation of affirmative laws. (Sutherland, Statutory Construction, 2d ed., sec. 248.) There is a clear distinction between affirmative and negative statutes in regard to their repealing effects upon prior legislation, which may be expressed by saying that **while an affirmative statute does no impliedly repeal the prior law unless an intention to effect the repeal is manifest, a negative statute repeals all conflicting provisions unless the contrary intention is disclosed.** In State *vs.* Commissioners of Washoe County (22 Nev., 203, 210), the court said:
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> > One affirmative statute will not repeal another, unless there is an absolute conflict between them, or it can be ascertained in some manner that a repeal was intended. But where the later act is expressed in negative terms, the principle is different. Negative statutes are mandatory, and must be presumed to have been intended as a repeal of all conflicting provisions, unless the contrary can be clearly seen."

Guided by the foregoing jurisprudential precepts, it is not difficult

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[15] G.R. No. 14957, March 16, 1920

to grasp at the first instance that the express and categorical grant to the Commission of power and authority to *"conduct a summary investigation and issue an order directing the inspection or reproduction of the requested records"* in Section 73 of the RCC is plainly irreconcilable with the grant of the same authority to the RCC under Section 1(a)(5) of A.M. No. 01-2-04-SC. Consequently, Section 187 of the RCC which expressly provides that *"[a]ny law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent with any provision of this Act is hereby repealed or modified accordingly"* shows a clear intent on the part of the Legislature to return to the Commission the jurisdiction over matters relating to inspection of books and records.

Going now to the substantive issue presented in the Appeal, this Office finds no merit in Appellees' argument that they were unjustifiably denied of their right to inspect and/or reproduce the corporate records when Appellants failed to accommodate their proposed inspection date, and instead requested for the deferment thereof to a month later i.e. January 2022. The Zamboanga EO sustained the position of Appellees when it ruled that the failure of Appellants to provide a specific place and time for the proposed inspection and/or reproduction, which could have abbreviated the instant proceedings, amounted to a denial of Appellees' right to inspect and/or reproduce the corporate books and records.

Appellees vigorously maintain that under Section 73 of the RCC, a request for inspection where a date is suggested by the requestor, is considered rejected/denied if met with a counter-proposal suggesting a different date.[16]

This Commission does not agree.

The right to inspect which every shareholder/member of a corporation can exercise is provided in Section 73 of the RCC, thus:

> "**Section 73.** *Books to be Kept; Stock Transfer Agent.* - Every corporation shall keep and carefully preserve at its principal office all information relating to the corporation including, but not limited to:
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> (a) The articles of incorporation and bylaws of the corporation and all their amendments;
> (b) The current ownership structure and voting rights of the corporation, including lists of stockholders or members group structures, intra-group relations, ownership data, and beneficial ownership.

[16] *Comment to Respondent-Appellants' Appeal Memorandum* dated 20 September 2022. Pars. 26 to 28

(c) The names and addresses of all the members of the board of directors or trustees and the executive officers;
(d) A record of all business transactions;
(e) A record of the resolutions of the board of directors or trustees and of the stockholders or members;
(f) Copies of the latest reportorial requirements submitted to the Commission; and
(g) The minutes of all meetings of stockholders or members, or of the board of directors or trustees. Such minutes shall set forth in detail among others; the time and the place of the meeting held, how it was authorized, the notice given, the agenda therefor, whether the meeting was regular or special, its object if special, those present and absent, and every act done or ordered done at the meeting. Upon the demand of a director trustee, stockholder or member, the time when any director, trustee, stockholder or member entered or left the meeting must be noted in the minutes; and on a similar demand, the yeas and nays must be taken on any motion or proposition, and a record thereof carefully made. The protest of a director, trustee, stockholder or member on any action or proposed action must be recorded in full upon their demand.

Corporate records, regardless of the form in which they are stored, shall be open to inspection by any director, trustee, stockholder or member of the corporation in person or by a representative at reasonable hours on business days, and a demand in writing may be made by such director, trustee or stockholder at their expense, for copies of such records or excerpts from said records. The inspecting or reproducing party shall remain bound by confidentiality rules under prevailing laws, such as the rules on trade secrets or processes under Republic Act No. 8293, otherwise known as the "Intellectual Property Code of the Philippines", as amended, Republic Act No. 10173, otherwise known as the "Data Privacy Act of 2012" Republic Act No. 8799, otherwise known as "The Securities Regulation Code", and the Rules of Court.

A requesting party who is not a stockholder or member of record, or is a competitor, director, officer, controlling stockholder or otherwise represents the interests of a competitor shall have no right to inspect or demand reproduction of corporate records.
Any stockholder who shall abuse the rights granted under this section shall be penalized under Section 158 of this Code, without prejudice to the provisions of Republic Act No. 8293, otherwise known as the "Intellectual Property Code of the Philippines", as amended, and Republic Act No. 10173, otherwise known as the "Data Privacy Act of 2012".

Any officer or agent of the corporation who shall refuse to allow the inspection and/or reproduction of records in accordance with the provisions of this Code shall be liable to such director, trustee, stockholder or member for damages, and in addition, shall be guilty of an offense which shall be punishable under Section 161 of this Code:

> *Provided,* That if such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal; *Provided, further,* That it shall be a defense to any action under this section that the person demanding to examine and copy excerpts from the corporation's record or minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making the demand to examine or reproduce corporate records or is a competitor, director, officer, controlling stockholder or otherwise represents the interest of a competitor.
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> If the corporation denies or does not act on a demand for inspection and/or reproduction, the aggrieved party may report such denial or inaction to the Commission Within five (5) days from receipt of such report, the Commission shall conduct a summary investigation and issue an order directing the inspection or reproduction of the requested records.
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> Stock corporations must also keep a stock and transfer book, which shall contain a record of all stocks in the names of the stockholders alphabetically arranged; the installments paid and unpaid on all stocks for which subscription has been made, and the date of payment of any installment; a statement of every alienation, sale or transfer of stock made, the date thereof, by and to whom made; and such other entries as the bylaws may prescribed, The stock and transfer book shall be kept in the principal office of the corporation or in the office of its stock transfer agent and shall be open or inspection by any director or stockholder of the corporation at reasonable hours on business days.
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> A stock transfer agent or one engaged principally in the business of registering transfers of stocks in behalf of a stock corporation shall be allowed to operate in the Philippines upon securing a license from the Commission and the payment of a fee to be fixed by the Commission, which shall be renewable annually: *Provided,* That a stock corporation is not precluded from performing or making transfer of its own stocks, in which case all the rules and regulations imposed on stock transfer agents, except the payment of a license fee herein provided, shall be applicable: *Provided, further,* That the Commission may require stock corporations which transfer and/or trade stocks in secondary markets to have an independent transfer agent."

The afore-quoted provision is based on and implements the corporate governance principles of disclosure, transparency, and equitable treatment of shareholders. The said provision is intended to ensure that the board, being required to act and decide on corporate matters on a fully informed basis, should have access to accurate and relevant information in a timely manner; while in relation to the shareholders/members, these provisions aim to enable them to take active participation in meetings and/or affairs of the corporation by making an informed decision on matters that require their assent, to assess the stewardship of management including the performance by the board of its fiduciary duties, and to effectively exercise their right to influence.[17] It is noteworthy that the RCC, unlike the old Corporation Code[18], now goes to the extent of enumerating the documents or records that contain information which stockholders, members, directors, or trustees can inspect and obtain to enable them to know how their investments are being used and the actual financial condition of the corporation.

The foregoing notwithstanding, it must be equally emphasized that the right to inspect and reproduce corporate books and records is not absolute. In the case of *Philippine Associated Smelting and Refining Corporation vs Lim, et. al.*[19], the Supreme Court had the occasion to expound on this matter, thus:

> "The right to inspect under Section 74 of the Corporation Code is subject to certain limitations. However, these limitations are expressly provided as *defenses in actions filed under Section 74*. Thus, this Court has held that a corporation's objections to the right to inspect *must be raised as a defense:*
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> > 2) the person demanding to examine and copy excerpts from the corporation's records and minutes has not improperly used any information secured through any previous examination of the records of such corporation; and 3) the demand is made in good faith or for a legitimate purpose. The latter two limitations, however, must be set up as a defense by the corporation if it is to merit judicial cognizance. As such, and in the absence of evidence, the PCGG cannot unilaterally deny a stockholder from exercising his statutory right of inspection based on an unsupported and naked assertion that private respondent's motive is improper or merely for curiosity or on the ground that the stockholder is not in friendly terms with the corporation's officers."

Hence, Section 161 of the RCC expressly provides for the parameters and essential elements before an act can be considered as constituting a violation of the stockholders/members' right to inspect, and thus punishable.

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[17] The G20/OECD Principles of Corporate Governance were adopted by the Commission in complying with its mandate under the RCC
[18] BP Blg. 68
[19] G.R. No. 172948, October 05, 2016

> "The **unjustified failure or refusal** by the corporation, or by those responsible for keeping and maintaining corporate records, to comply with Sections 45, 73, 92, 128, 177 and other pertinent rules and provisions of this Code on inspection and reproduction of records shall be punished with a fine ranging from Ten thousand pesos (P10,000.00) to Two hundred thousand pesos (P200,000.00), at the discretion of the court, taking into consideration the seriousness of the violation and its implications. When the violation of this provision is injurious or detrimental to the public, the penalty is a fine ranging from Twenty thousand pesos (P20,000.00) to Four hundred thousand pesos (P400,000.00)." (Emphasis supplied)

Section 161 of the RCC is explicit in requiring that there must be an *unjustified failure or refusal* to allow the inspection and/or reproduction of records before a corporation, through its authorized representatives, can be adjudged liable for violating the right to inspect under Section 73 of the RCC. This is further emphasized and clarified in ***SEC Memorandum Circular No. 25, Series of 2020*** (MC 25), which provides that it is the *outright refusal* to allow the director, trustee, stockholder or member to inspect and/or reproduce the corporate records that constitutes a violation of the right to inspect.[20]

In the instant case, there is nothing in the evidence which shows that there was an outright and/or unjustified refusal on the part of Appellants to allow the inspection by Appellees of the corporate books and records, contrary to the latters' vigorous assertions that they were denied of such right.

To "deny" means to refuse to agree or accede to.[21] The Commission finds that Appellees were not denied, at least from the contemplation of Section 73 of the RCC and MC 25, of their right to inspect and reproduce the books and records of the Corporation. What is clear in the letters of the Appellants is their request for the rescheduling of the conduct of inspection and/or reproduction of records on account of the justifications that were provided therein. A response requesting the rescheduling of the inspection is not a denial of the original request. It means that the recipient of the original request has in fact agreed to the conduct of inspection, but on a later date. This is certainly not the outright refusal contemplated by law and the rules which is punishable. To accept Appellees' position would be to sanction a policy that any corporation who fails/refuses to immediately and fully comply with the demands of the requestor will render the former liable. This will put all corporations under the mercy of scheming stockholders/members, and promote

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[20] Section 2 (a) and (d), SEC Memorandum Circular No. 25, S. 2020
[21] https://www.dictionary.com/browse/deny

abuse of the exercise of the right to inspect.

The foregoing finds support in Sec. 2(b) and (e) of MC 25 which specifically allows and/or gives the subject corporation a reasonable time within which to act on the request, thus:

> "SECTION 2. Grounds – The following shall constitute a violation of the right to inspect and/or reproduce corporate records:
> xxx xxxx xxx
> b. Failure to take within a reasonable amount of time, the necessary steps that would allow the director, trustee, stockholder, or member of the corporation to inspect any of the corporate records in person, or by a representative…
> xxx xxx xxx
> e. Failure to take, within a reasonable amount of time, the necessary steps that would allow the direct director, trustee, stockholder, or member of the corporation to reproduce any of the corporate records in person, or by a representative…"

The records show that Appellees filed the Complaint invoking Section 73 of the RCC immediately after they sent their letter (dated 17 December 2021) on 23 December 2021, where they reiterated the request to be allowed to inspect and make copies of the corporate records. Appellees did not anymore bother to wait for the reply of Appellants who promptly sent their reply *i.e.* the letter dated 22 December 2021 which showed that the Corporation had made an effort to schedule the inspection at a reasonable time not far from the date proposed by the Appellee.[22]

On the basis of the foregoing factual backdrop, the Commission finds that the Appellees' resort to Section 73 of the RCC was premature as they have not yet been denied of the exercise of their right to inspect. Moreover, Appellees' reliance in the cases of Logan vs Philippine Acetylene Co.[23], and Heirs of Fausto Ignacio vs Home Bankers Savings and Trust Company[24] is misplaced as the principle established/applied therein i.e. a counter-offer or a qualified acceptance is always considered as a rejection of the original offer is applicable only in contract law. It does not apply to matters relating to the exercise of stockholders/members' rights under the RCC where there must be a clear denial for a cause of action to accrue.

Finally, while We agree with the observation of Zamboanga EO that to date, Appellees have not yet been accorded the exercise of their right

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[22] See Annex "A" of the Verified Answer
[23] *Comment to Respondent-Appellants' Appeal Memorandum* dated 20 September 2022. Par. 26
[24] *Ibid.* Par. 27

to inspect, the records show that the same resulted from Appellees' firm position that they have already been denied of such right by Appellants. This in fact led to the filing of the Complaint. Had Appellees at least considered the proposal of Appellants to conduct the inspection and reproduction of records on a month later, which to the mind of this Commission is reasonable, instead of immediately concluding that Appellants' denial of their request to inspect was unreasonable, unjustified, inadequate and evasive[25], the parties could have saved their time and resources in litigating the instant case.

WHEREFORE, premises considered, the instant *Appeal Memorandum* is hereby **GRANTED**. The Decision and Resolution of the SEC Zamboanga Extension Office are **REVERSED** and **SET ASIDE**.

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

[25] *Ibid.* Par 34