IN THE MATTER OF PHILCOMSAT HOLDINGS CORPORATION,

SEC *En Banc* Case No. 09-06-89
For: Review of CFD's Order

PHILCOMSAT HOLDINGS CORPORATION

Petitioner.

x---x

DECISION

This refers to the *Petition for Review*, filed by Philcomsat Holdings Corporation (hereinafter 'PHC') on 07 September 2006, appealing the Order[1], dated 22 August 2006, of the then Corporation Finance Department ('CFD')[2] which directed the PHC to allow the Department to conduct an audit of its 2003 and 2004[3] books and accounts on 08 September 2006.

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[1] The Order declared that:

> "Finally, the authority of the Commission to require the issuer further information under Section 15 of the Securities Regulation Code applies if at any time, the information contained in the registration statement together with its financial reports, which were filed and approved by the Commission, has become misleading, incorrect, inadequate or incomplete in any material respect. Since there has been allegation for a legitimate stockholder that the company has been illegally dissipating its assets, the Commission must determine the veracity of such claim and verify the accuracy of the company's representation of its financial condition considering that Philcomsat Holdings Corporation is a listed company.
>
> Registration of the company's securities being valid and subsisting, the same may be suspended even if the company is not currently selling or offering for sale such securities should there be a finding that the company has violated the Securities Regulation Code. Xxx
>
> In view thereof, PHC is hereby directed to allow the said inspection subject of the matter on September 8, 2006."

[2] Now Corporate Governance & Finance Department.

[3] CFD's letter to PHC dated April 27, 2006 states that, "[u]pon review, the audited financial statements filed by your company show that the documents do not fully disclose and explain the specific reasons for the substantial increase in expenses from years 2003 to 2004. Hence, there is a need to further examine other financial information and records of your company such as vouchers, disbursement books and other relevant documents."

PHC did not allow the CFD access to its books and accounts. Instead, it filed the instant *Petition* arguing that:

1. The Commission must defer examination of PHC's books and records since it is *subjudice*.
2. The intended examination violates PHC's right to due process.
3. Section 15 of the Securities Regulation Code (SRC) does not apply to PHC.
4. The Commission is being used by certain individuals for their own personal interest.

In its *Comment*, dated September 20, 2006, the CFD avers that:

1. It has the authority to inspect and examine the corporate books and records of PHD despite the attendant circumstances.
2. There was no violation of due process.
3. Section 15 of the SRC applies to the petitioner.
4. It is impartial and it will not allow itself to be partisan to any of the personal interest of the parties concerned.

The CFD also maintains, in its *Comment,* that it's 22 August 2006 Order emanated from a letter of Jose Ma. Ozamis[4] requesting the Office of the General Counsel (OGC) of the Commission to issue a Cease and Desist Order (CDO) against PHC, its directors and officers, to enjoin them from making any withdrawals from any and all PHC's accounts and placements which would result in the dissipation of PHC's assets until the completion of PHC's Annual Stockholders' Meeting. The OGC, in its Memorandum to the CFD[5], referred Mr. Ozamis' letter for CFD's appropriate action. Thus, CFD's action was "to determine through the intended audit, if there is a violation of the SRC and its Implementing Rules and Regulations to warrant the issuance of a CDO."[6]

While this Petition was pending, the Commission received, on 27 April 2009, a letter[7] from Katrina Ponce-Enrile, representing herself as the chairwoman of PHC, requesting the Commission to defer its Order revoking the registration of its securities and alleging that:

1. Since 11 December 2007, PHC has been under the control of a different group of directors/stockholders. The Bildner & Ponce-Enrile group was able to take control of PHC from the Brodett, Lokim & Locsin group that refused the audit and filed the subject case.

2. The Commission was able to conduct the audit after the PHC's external auditor, Virgilio Santos, was compelled to submit his working papers.

3. PHC appeared for hearing on 20 April 2009 before the CFD regarding the matter of revoking the registration of PHC's securities for violations of the Securities Regulation Code.

[4] Dated 21 September 2005. Annex "H", CFD's Comment to the Petition.
[5] Dated February 27, 2006, Annex "A", Comment.
[6] Page 8, last paragraph, Comment.
[7] Dated on 27 April 2009 (erroneously dated 27 April 2008).

"The Court DIRECTS the Locsin-PCGG Group to render an accounting of all the funds and other assets received from the Philippine Overseas Telecommunications Corporation, Philippine Holdings Corporation and Philippine Communications Satellite Corporation since September 1, 2004, and to return such funds to the respective corporations within thirty days from the finality of this decision."

Moreover, the fact that the matter of lifting of the Order of Suspension of Registration of Securities[18] issued by the then CFD is still pending with the MSRD shows that the Commission does not cede its visitorial powers over PHC. In fact, the Commission already assessed PHC a penalty of PhP 5,402,100.00 for non-compliance with the reportorial requirements. In the instant case, the Order appealed from was issued by the then CFD to determine whether there is a ground to suspend PHC's right to sell and offer for sale securities pending further investigation.

Accordingly, the foregoing indicate that the instant Appeal has been rendered moot and academic by the subsequent events that transpired during the pendency of the case.

WHEREFORE, premises considered, the instant *Petition for Review* is hereby **DISMISSED** for being moot.

SO ORDERED.

Mandaluyong City, 23 April 2015.

TERESITA J. HERBOSA
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner

[18] Commission's Order, dated August 7, 2008, suspending the registration of PHC's securities due to its violation of the SRC Rules 17.1 (1)(A)(i) and (ii) for non-filing of 2006 and 2007 Annual Report, as well first three Quarterly Reports for 2007.

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

CELIA S. BENICO,
Petitioner,

- versus -

SEC CASE NO. 04-96-5322

MA. SALOME I. UNIDAD,
MA. TERESA U. SAGUINSIN and
INTERNAL AUDITOR OF
UNISHOPPE SUPERMARKET
MANAGEMENT CORPORATION,
Respondents.

x---x

23 March 2015

TO:

ORCEO DEFANTE DELA CRUZ CUDIAMAT REGINO & DELA CRUZ LAW OFFICES
Counsel for the Respondents-Appellants
Ma. Salome L. Unidad and
Ma. Teresa U. Saguinsin
Suite 319 Fairtrade Commercial Center
Ortigas Avenue Extension, Cainta, Rizal

ATTY. CITADEL LINAG
Counsel for the Petitioner-Appellee
129-D Malakas Street,
Central District, Diliman,
Quezon City

GREETINGS:

Please take notice that on 23 April 2015, a **DECISION** was issued in the above-entitled case, the original of which is now on file with the Commission.

Mandaluyong City, Philippines.

For the Commission En Banc:

C. A. GERARD M. LUKBAN
Commission Secretary

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

CELIA S. BENICO,
Petitioner,

- versus -

SEC CASE NO. 04-96-5322

MA. SALOME I. UNIDAD,
MA. TERESA U. SAGUINSIN and
INTERNAL AUDITOR OF
UNISHOPPE SUPERMARKET
MANAGEMENT CORPORATION,
Respondents.

x -x

DECISION

For decision is the *Motion for Reconsideration* filed by herein Respondents, last October 1, 2004 which, in the interest of substantial justice is hereby treated as an appeal to the En Banc, praying:

> ... that the Decision dated 14 September 2004 insofar as it found respondents and the undersigned guilty for indirect contempt be reverse(d) and reconsider(ed) for (being) patently illegal and void for it was promulgated in excess and/or lack of jurisdiction.

Considering the length of time that this case has been pending, from its initial filing on April 29, 1996 to the present, it behooves this Commission to revisit the facts that led to the filing of this complaint to obviate any further needless proceedings after the promulgation of this Resolution.

I

The Petition was filed on April 29, 1996. The Answer, with Compulsory Counterclaim and Affirmative Defenses, was filed on June 13, 1996. The Answer to Respondents' Counterclaim was filed on July 11, 1996.

x--x

The facts of the case are summarized in the Decision promulgated on September 13, 1999 by the Securities Investigation and Clearing Department, and are as follows:

> Petitioner as well as respondents Ma. Salome I. Unidad and Ma. Teresa U. Saguinsin are stockholders and members of the Board of Directors of Unishoppe Supermarket Management Corp. (Unishoppe for brevity), which is a corporation duly organized and registered with this Commission (Exhs. "A" to "A-7," and "B"). In addition, respondent Salome I. Unidad is the President of Unishoppe while respondent Ma. Teresa U. Saguinsin is the Treasurer. Besides being a stockholder and director of Unishoppe, petitioner also worked as storekeeper (Exhs. "C" to "C-1") until she ceased reporting to her work just after consuming her March 5 to 19, 1996 vacation leave (Annex "Y").
>
> Prior to her severance as storekeeper of Unishoppe, however, petitioner appeared to have been notified (about) and attended all board meetings of Unishoppe (Annexes "A" to "K" of the Answer).
>
> Likewise as admitted in the (A)nswer, Unishoppe is financially successful in its operation and thus it maintained a total surplus profit of ₱1,214,136.00, as of December 31, 1996 (Exhs. "1" to "1-C-1).
>
> Petitioner testified that she made repeated oral demands (of) the Corporate Secretary and Accountant Miss Vina Pundamera for accounting and copying company records and minutes of meeting. (TSN, June 17, 1997, pp. 29 to 32, and July 9, 1997, pp. 10 to 15)
>
> On March 23, 1996, petitioner's counsel also sent to respondents a letter requiring ... an explanation about petitioner's severance from Unishoppe as storekeeper and respondents' failure to heed the oral demand for accounting (Annex "Z").
>
> Evidence also show that Unishoppe has not filed any Financial Statements with the Commission since its registration in 1992. (Exhs. "D")

After hearing, Hearing Officer Paulino Q. Gallegos, Securities Investigation and Clearing Department, disposed of the case, as follows:

> WHEREFORE, premises considered, judgment is hereby rendered ordering respondents (1) to immediately furnish petitioner with Unishoppe's most recent financial statement, which shall include a balance sheet as of the end of the last taxable year and a profit and loss statement for said taxable year, showing in reasonable detail its assets and liabilities and the result of its operation; (2) to allow petitioner to inspect and copy corporate books and records in accordance with the By-(L)aws; and (3) to pay ₱30,000.00 in attorney's fees.
>
> The Supervision and Monitoring Department of this Commission is moreover requested to take the appropriate action against respondents and Unishope for their failure to comply with the Commission's reportorial requirements and for apparent transgression of the second paragraph of Sec. 45 of the

x--x

No pronouncement as to costs.

On June 7, 2001, the Commission *en banc* decided the appeal of herein respondents as follows:

> After a careful review of this case, we rule in favor of the petitioner-appellee. The respondents are real parties in interest being the members of the board and officers of Unishoppe Supermarket Corporation, and they are, therefore, liable to perform the duties required of the corporation by the law, as in this case for accounting and for failure to perform the same, to held liable for damages. In the case of the award for damages and attorney's fees, the hearing officer did not err in not awarding the same to the appellants as petitioner had a valid cause of action against the respondents-appellants which petitioner brought before this Commission for resolution.
>
> Accordingly, the decision appealed from is hereby AFFIRMED in toto.
>
> SO ORDERED.

On October 5, 2001, petitioner filed a *Motion for Execution* alleging as follows:

> 1. In an Order dated June 7, 2001, the Honorable Commission, in SEC AC No. 696 filed by the respondents herein, AFFIRMED in toto the Decision rendered by the then Securities Investigation and Clearing Department, through its Hearing Officer, on September 13, 1999, x x x;
>
> 2. The records of the Commission show that respondent(s)-appellants, through their counsel, Atty. Reynante Orceo, received a copy of the aforesaid Order on July 20, 2001;
>
> 3. The reglementary period to appeal had already lapsed and no appeal of the said Order has been made or perfected. Hence, rendering the subject Order of the Honorable Commission, executory.

On November 8, 2001, The Office of the General Counsel, for and on behalf of the Commission *en banc*, granted petitioner's *Motion for Execution*.

On November 23, 2001, a Writ of Execution was issued.

On March 12, 2002, petitioner filed a pleading, entitled *SUPPLEMENTAL COMMENT/OBJECTION WITH MOTION TO CITE RESPONDENT IN CONTEMPT*, where she alleged as follows:

> 1. Earlier herein petitioner has filed a written "Comment and Objections to Sheriff's Return With Prayer For Is

> 2. So as to prevent respondent from making a mockery of the execution, present and prospective, said respondent be cited for contempt in refusing petitioner to inspect and copy its Corporate books and records, pursuant to the dispositive portion of the decision dated September 13, 1999 when the same was being served by the assigned Sheriff;
>
> 3. As gleaned from the Sheriff's Return, Sheriff Ibuna merely relied on the written Financial Statement of the Unishoppe Supermarket Corporation submitted to him on January 15, 2002.

then, prayed for the following relief, as follows:

> WHEREFORE, it is respectfully prayed to grant petitioner's earlier motion as well as herein supplemental pleading with prayer to cite respondent in contempt.
>
> Other just and equitable relief(s) are prayed for.

On February 20, 2003, The Office of the General Counsel, for and on behalf of the Commission *en banc*, granted petitioner's motion for issuance of an alias writ of execution.

On even date, an *Alias* Writ of Execution was issued.

On September 22, 2003, petitioner filed a motion, entitled *MOTION TO CITE RESPONDENTS IN CONTEMPT WITH PRAYER TO REVOKE CERTIFICATE/ARTICLES OF INCORPORATION.*

On December 19, 2003, respondents filed their *OPPOSITION/COMMENT (To the Motion to Cite Respondents for Contempt*).

On February 26, 2004, petitioner filed her *MOTION TO CITE RESPONDENTS IN CONTEMPT WITH PRAYER TO REVOKE CERTIFICATE/ARTICLES OF INCORPORATION.*

On September 14, 2004, General Counsel Vernette G. Umali-Paco resolved the Motions for Contempt, as follows:

> For consideration of the Commission is the Motion to Cite respondents in contempt with prayer to revoke certificate/ articles of incorporation of Unishoppe Supermarket Management Corporation for failure to comply with a lawful order of the Commission.
>
> . . . .

this Commission under SEC Registration Number AS92001447 on January I, 1992. Among its incorporators is the herein petitioner.

On April 29, 1996, Petitioner Celia S. Benico, also an incorporator and stockholder of the corporation, filed a Petition for Complete Accounting and Damages against respondents.

On September 13, 1999, the then Securities Investigation and Clearing Department (SICD) rendered a decision in favor of petitioner ordering respondents (1) to immediately furnish petitioner with Unishoppe's most recent financial statement, which shall include a balance sheet as of the end of the last taxable year, showing in reasonable detail its assets and liabilities and the result of its operations; (2) to allow petitioner to inspect and copy corporate books and records in accordance with the by-laws, and (3) to pay P30,000.00 in attorney's fees. The Supervision and Monitoring Department was likewise requested to take the appropriate action against the respondents and Unishoppe for their failure to comply with this Commission's reportorial requirements and for apparent transgression of the second paragraph of Sec. 45 of the Corporation Code on declaration of dividends.

The decision was affirmed in toto by the Commission En Banc on June 7, 2001.

On February 19, 2003, the Commission issued a Writ of Execution in the above-entitled case, addressed to the Sheriff of the Office of the Clerk of Court, RTC Branch 70, Binangonan, Rizal.

x x x

A conference was scheduled on October 22, 2003 for the respondents to show cause why they should not be cited for contempt for violation of the lawful orders of the Commission. None of the respondents showed up for the said conference. In a Motion to set the case for hearing, dated October 23, 2003, counsel for the respondents, Atty. Reynante B. Orceo manifested that he had a previous commitment on the exact date and time as the October 22, 2003 Conference and thus, was unable to attend.

On November 5, 2003, the Commission issued another Notice of Conference, setting the date for December 8, 2003. x x x

x x x

Finally, on April 26, 2004, a last Conference was held relative to the Show Cause Order in the above-entitled case. Both parties attended or were represented in the meeting. Counsel for Unishoppe, Atty. Orceo manifested that the respondents will not be able to comply with the Writ of Execution allegedly because the external auditor had disposed of the financial statements of the corporation. He even represented that respondents are in no position to comply with the order because they do not have custody of the financial statements and other records but rather it is the external auditor which has custody over the same. During the Conference, counsel for the respondents was given a non-extendible thirty (30) day period within which to submit position paper on why respondents should not be cited for contempt for failure to comply with a lawful order of the x---x

x x x

The allegations of the respondents, in their position paper, dated May 21, 2004, that the lack of verification and certification of non-forum shopping in the Petitioners' Motion To Cite For Contempt rendered the same defective and the subsequent filing of the second motion did not cure the "defect" but rather constituted "forum-shopping," is of no moment considering that the instant contempt order was commenced under the first paragraph of **Section 4 of Rule 71 of the Rules of Court**, which provides that:

> "Sec. 4 How Proceedings commenced.—Proceedings for indirect contempt may be initiated motu propio by the court against which the contempt was committed by order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

The Show Cause Orders issued by the Commission on October 8, 2003, November 5, 2003 and March 26, 2004 would qualify as "any other formal charge requiring the respondent to show cause why he should not be punished for contempt" under the first paragraph of the above section of the Rules of Court which do not require verification and a certification of non-forum shopping.

Finally, we note that USMC has not filed any General Information Sheet (GIS) since its incorporation in 1992. Neither has it filed any Financial Statement (FS) since 1999. Under the existing rules, non-filing of required reports such as the GIS and the FS is ground for revocation of the certificate of registration. Further, counsel for USMC admitted during the hearing/conference that the corporation has closed shop.

WHEREFORE, in the light of the foregoing, the instant motion is GRANTED. Accordingly, respondent directors and officers of Unishoppe Supermarket Management Corporation namely: Ma. Teresa U. Saguinsin, Ma. Salome I. Unidad, Ma, Gina B. Panganiban and Ma. Vina F. Fundamera and their counsel Atty. Reynante B. Orceo are adjudged GUILTY OF INDIRECT CONTEMPT for violation of the lawful orders of the Commission, and are hereby FINED the amount of ₱10,000.00 each. Respondents are hereby requested to file their Compliance within ten (10) days from receipt of this Order.

Further, the Certificate of registration of Unishoppe Supermarket Management Corporation is hereby REVOKED for failure to comply with reportorial requirements.

SO ORDERED.

II

We reverse.

For a much better analysis of the issues, it is best to quote the pertinent portions of the Position Paper that respondents filed "in compliance (with) the order of the Office of the General Counsel to submit its position paper in connection with the motion to cite respondents in contempt with prayer to revoke the certificate/articles of incorporation," thus:

> 1. On September 25, 2003, undersigned received a motion to cite respondents in contempt with prayer to revoke certificate/articles of incorporation. In a notice of conference dated November 5, 2003, this Honorable Office set the conference for the said motion on December 8, 2003 at ten o'clock in the morning.
>
> 2. On 19 December 2003, undersigned filed his opposition/comment to the said motion. Later on 03 March 2004, undersigned received again a motion to cite respondents in contempt with prayer to revoke certificate/articles of incorporation, the alle gations of which are substantially the same as the first motion filed by the petitioner that the undersigned received on 25 September 2003.
>
> 3. A reading of the undersigned's opposition/comment tc the first motion points out its defectiveness particularly the lack of compliance with the requirement provided by the Rules of Court in filing an initiatory pleading. For emphasized (therein), the opposition/comment filed by the undersigned to the first motion alleged, among others, the following:
>
>> "A reading of the motion to cite respondent in contempt reveals that the same was not verified and worst it has no certification on non-forum shopping.
>>
>> Further, the same rules provide that the absence of certification on non-forum shopping is a ground for the dismissal of the complaint and the party and his counsel who did not comply with the requirement are liable for either direct or indirect contempt. Pertinent provision of the rules is herein quoted as follows:
>>
>>> "The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>>>
>>> Failure to comply with the foregoing requirements

x--x

> dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions." *(Rule 7, Section 5, 1997 New Rules of Civil Procedure — underscoring, ours);* page 2, opposition/comment

> 4. Thus, in accordance with the foregoing rules the first motion should be dismissed. The subsequent filing of the second motion would not cure the defect as provided for by the rules. Moreover, it cannot be just coursed through the mere filing of a motion for what the rules said is a *"verified petition"*.
>
> 5. In an attempt to cure the fatality of the first motion, petitioner then filed a second motion alleging the same matters as in the first motion. This is clearly forum-shopping for the petitioner is then hoping to have a favorable response for the two motions she had filed.
>
> 6. Finally, the rule provides that the petition for contempt shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision." *(Rule 71, Section 4, 1997 New Rules of Civil Procedure)*

Section 12, Rule 71 of the 1997 Rules of Civil Procedure, referring to indirect contempt against quasi-judicial entities, states very clearly, to wit:

> **Section 12.** *Contempt against quasi-judicial entities.*—**Unless otherwise provided by law**, this Rule shall apply to contempt committed against persons, entities, bodies or agencies exercising quasi-judicial functions, or shall have suppletory effect to such rules as they may have adopted pursuant to authority granted to them by law to punish for contempt. The Regional Trial Court of the place wherein the contempt has been committed shall have jurisdiction over such charges as may be filed therefor. (n)
> **(Emphasis supplied)**

That the Commission is exempted from the coverage of Section 12, Rule 71 of the 1997 Rules of Civil Procedure, has been affirmed in ***Robosa vs. National Labor Relations Commission (First Division)***, G.R. No. 176085, February 8, 2012, which states, as follows:

> Rule 71 of the Rules of Court does not require the labor arbiter or the NLRC to initiate indirect contempt proceedings before the trial court. This mode is to be observed only when there is no law granting them contempt powers. As is clear under Article 218(d) of the Labor Code, the labor arbiter or the Commission is empowered or has jurisdiction to hold the offending party or parties in direct or indirect contempt. The petitioners, therefore, have not improperly brought the indirect contempt charges against the respondents before the NLRC.

(http://www.lawphil.net/judjuris/juri2012/feb2012/gr_176085_2012.html; p. 3 [print preview])

The Law involved herein, "The Securities Regulation Code" (R.A. No. 8799), provides in its Section 5.1, thus:

> **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, 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:
>
> x x x
>
> (j) Punish for the contempt of the Commission, both direct and indirect, **IN ACCORDANCE WITH THE PERTINENT PROVISIONS OF** and penalties prescribed by **THE RULES OF COURT**;
>
> x x x

(Emphasis supplied)

Just what are the pertinent provisions of the Rules of Court with respect to the procedure, which petitioner should have followed when she charged respondents with indirect contempt?

The Honorable Supreme Court has explained, in ***Anna Liza Valmores-Salinas v. Judge Crisologo S. Bitas, Regional Trial Court, Branch 7, Tacloban City***, A.M. No. RTJ-12-2335 March 18, 2013, the manner in which herein petitioner who has charged respondents with an indirect contempt **should have proceeded**, as follows:

> Section 4, Rule 71 of the Rules of Court explicitly states:
>
> Sec. 4. *How proceedings commenced.*—Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.
>
> IN ALL OTHER CASES, **charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned.** If the contempt charges arose out of or are related to a principal action

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> but said petition shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision.

(Emphasis supplied)

(https://docs.google.com/viewer?url=http%3A//sc.judiciary.gov.ph/jurisprudence/2013/march2013/RTJ-12-2335.pdf; page 4; "charges for indirect contempt x x x court concerned" was emphasized in the original; all caps and all bold "IN ALL OTHER CASES" emphasis is supplied)

In the case at bar, petitioner cited respondents for contempt three (3) times.

It should be stated that the <u>first</u> motion to cite respondents for contempt, which was filed on March 12, 2002, was not the subject of the September 14, 2004 Decision issued by then General Counsel Vernette G. Umali-Paco. While the same will not be discussed hereunder, for the easy reference and convenience of the Commission, the scanned upper half of page 1 of said <u>first</u> motion is as follows:

REPUBLIC OF THE PHILIPPINES
SECURITIES AND EXCHANGF COMMISSION
SEC BLDG., EDSA, GREENHILLS
MANDALUYONG, CITY

CELIA S. BENICO,
Petitioner,

- versus -   SEC. CASE NO. 04-96-5322

MA. SALOME L. UNNIDAD, ET.AL.,
x- - - - - - - - - - - - - - - - - -x

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<u>SUPPLEMENTAL COMMENT/ OBJECTION</u>
<u>WITH MOTION TO CITE RESPONDENT</u>
<u>IN CONTEMPT</u>

Comes Now, petitioner by counsel and unto the Honorable

The second motion was filed on September 22, 2003. The scanned upper half of page 1 of the pleading is as follows:

x--x

Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
Office of the General Counsel
SEC BUILDING, EDSA, GREENHILLS
Mandaluyong City

CELIA S. BENICO,
Petitioner,

- vs - SEC CASE NO. 04-96-5322

MA. SALOME L. UNIDAD, ET. AL.,
Respondents.
X - X

MOTION TO CITE
RESPONDENTS IN CONTEMPT
WITH PRAYER TO REVOKE
CERTIFICATE/ARTICLES OF INCORPORATION

Comes Now, petitioner by counsel unto the Honorable Court respectfully alleges:

The third motion was filed on February 26, 2004. The scanned upper half of page 1 of the pleading is as follows:

Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
Office of the General Counsel
SEC BUILDING, EDSA, GREENHILLS
Mandaluyong City

CELIA S. BENICO,
Petitioner,

- vs - SEC. CASE NO. 04-96-5322

MA. SALOME L. UNIDAD, ET. AL.,
Respondents.
x - - - - - - - - - - - - - - - - x

MOTION TO CITE
RESPONDENTS IN CONTEMPT
WITH PRAYER TO REVOKE
CERTIFICATE/ARTICLES OF INCORPORATION

The record **does not show** that the two motions (September 22, 2003 and February 26, 2004) to cite for contempt filed by herein petitioner have been docketed separately as verified petitions. The two motions still have the same docket number, as shown by the above computer scans of the upper half of page 1 of said motions.

The motion filed September 22, 2003 does NOT have a certification against forum-shopping. <u>This glaring defect was pointed out by respondents in their Opposition/Comment filed December 19, 2003</u>.

As stated by the Honorable Supreme Court in ***Mandaue Galleon Trade, Inc. v. Isidto***, G.R. No. 181051, July 5, 2010:

> The filing of a certificate of non-forum shopping is **mandatory in initiatory pleadings**. The **subsequent compliance with the requirement does not excuse a party's failure to comply therewith in the first instance**. In those cases where the Court excused non-compliance with the requirement to submit a certificate of non-forum shopping, it found special circumstances or compelling reasons which made the strict application of the Circular clearly unjustified or inequitable. **In this case**, however, the **petitioners offered no valid justification for their failure to comply with the Circular**.
> (http://www.lawphil.net/judjuris/juri2010/jul2010/gr_181051_2010.html; p. 3 [print preview]; emphasis supplied)

This is the reason why the motion filed February 26, 2004 contains a Verification, with its paragraphs 4, 5, 6 and 7 being that required for the certification against forum-shopping — petitioner's counsel having been reminded by respondents' counsel that the same is mandatory. No explanation was given by petitioner why the certification was not attached to said motion filed September 22, 2003.

As reiterated by the Honorable Supreme Court in ***Anderson v. Ho***, G.R. No. 172590, January 7, 2013:

> The need to abide by the Rules of Court and the procedural requirements it imposes has been constantly underscored by this Court. **One of these procedural requirements is the certificate of non-forum shopping which, time and again, has been declared as basic, necessary and mandatory for procedural orderliness.**
>
> In **Vda. De Formoso v. Philippine National Bank** (G.R. No. 154704, June 1, 2011, 650 SCRA 35), the Court reiterated the guidelines respecting non-compliance with or submission of a defective certificate of non-forum shopping, the relevant portions of which are as follows:
>
> 4) As to certification against forum shopping, **non-compliance therewith** or a defect therein, x x x, **is generally not curable by its subsequent submission** or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons".
>
> x x x x

x--x

(http://www.lawphil.net/judjuris/juri2013/jan2013/gr_172590_2013.html; p. 3 [print preview]; print preview)

The phrase "full compliance with the requirements for filing initiatory pleadings" **CONTEMPLATES**, among other things, **the payment of docket and other lawful fees so that the verified petition will have its own docket number**, which docket number will be different from the docket number of the main complaint, from whence the indirect contempt incident arose.

Even if the Commission were to be very liberal about the issue that petitioner may be said to have "cured" — in said February 26, 2004 motion — the non-submission of a Verification in the September 22, 2003 motion, which contains the allegations needed to comply with the Certification of Non-Forum Shopping, the most important provision of the Rules — **payment of docket and other lawful fees** — **WAS NOT COMPLIED WITH**.

It is well settled that:

> The **filing** of the complaint or **other initiatory pleading AND** the **payment** of the **prescribed docket fee** are the acts that **vest a trial court with jurisdiction over the claim**. (Sun Insurance Office, Ltd., (SIOL) vs. Asuncion, G.R. Nos. 79937-38, February 13, 1989, 170 SCRA 274, 285)
> (***Fedman Development Corporation v. Agcaoili***, G.R. No. 165025, August 31, 2011; http://www.lawphil.net/judjuris/juri2011/aug2011/gr_165025_2011.html; 3 [print preview]; emphasis supplied)

In other words, this initiatory pleading (*i.e.*, the February 26, 2004 motion) of what may be accepted as a "substantially complied-with verified petition (under the Commission's power to relax the rules on technicality)," to cite respondents in contempt of the Commission may not be acted upon by the Commission **due to the inescapable fact that NO DOCKET FEES HAD BEEN PAID by petitioner**.

Further, each of the motions that were filed **do not have** attached a certified true copy of the Decision by the Honorable Hearing Officer Paulino Q. Gallegos, Securities Investigation and Clearing Department, promulgated on September 13, 1999 and the Decision of the Commission *en banc* promulgated on June 7, 2001.

Furthermore, each of the motions that were filed **do not likewise have** attached certified true copies of the following:

Answer, with Compulsory Counterclaim and Affirmative Defenses (filed June 13, 1996); and

Answer to Respondents' Counterclaim (filed July 11, 1996).

While the verified petition charging a party with indirect contempt may be heard and decided together with the main complaint, upon the discretion of the hearing officer, the first and foremost requirement is that the charge for indirect contempt that is initiated by one of the parties to a case **MUST BE "commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned [the Commission, in this instance].**"

Land Bank of The Philippines v. Severino Listana, Sr., G.R. No. 152611, August 5, 2003, explains the need for a verified petition, as follows:

> The requirement of a verified petition is mandatory. Justice Florenz D. Regalado, Vice-Chairman of the Revision of the Rules of Court Committee that drafted the 1997 Rules of Civil Procedure explains this requirement:
>
> > 1. This new provision clarifies with a regulatory norm the proper procedure for commencing contempt proceedings. While such proceeding has been classified as a special civil action under the former Rules, the heterogeneous practice, tolerated by the courts, has been for any party to file a mere motion without paying any docket or lawful fees therefor and without complying with the requirements for initiatory pleadings, which is now required in the second paragraph of this amended section.
> >
> > x x x
> >
> > Henceforth, except for indirect contempt proceedings initiated *motu proprio* by order of or a formal charge by the offended court, **ALL CHARGES** shall be commenced by a verified petition with full compliance with the requirements therefor and shall be disposed of in accordance with the second paragraph of this section.
>
> (http://www.lawphil.net/judjuris/juri2003/aug2003/gr_152611_2003.html; p.3, if printed; emphasis supplied)

It is clear that the two motions to cite respondents in cont...

x--x

indirect contempt may be deemed not to have been filed at all EVEN THOUGH the Commission has the legal authority to punish herein respondents for indirect contempt of the Commission.

Simply put, there was no need for the Commission to have entertained said motions in the first place.

Judgment

WHEREFORE, the Commission **GRANTS** the Motion for Reconsideration filed by herein Respondents on October 1, 2004, by **VACATING** and **SETTING ASIDE** the Order promulgated September 14, 2004 by then General Counsel Vernette G. Umali-Paco.

SO ORDERED.

City of Mandaluyong, Philippines.

April 23, 2015.

TERESITA J. HERBOSA
Chairperson

ANTONIETA F. IBE
Commissioner

MANUEL B. GAITE
Commissioner

BLAS JAMES G. VITERBO
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner