

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

**HYATT OF HONGKONG
LIMITED (PHILIPPINE BRANCH),**
Petitioner,

C.T.A. CASE NO. 6507

Members:

-versus-

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, JJ.

**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

Promulgated:

SEP 21 2006

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RESOLUTION

On April 18, 2006, the Court issued a Resolution ordering petitioner to submit the necessary Board Resolution authorizing Mr. Rolando Villalon to act for and in behalf of petitioner.

On May 9, 2006, petitioner filed a Compliance with the said Resolution and submitted a notarized and authenticated copy of a certified board resolution, which confirm the authority of Mr. Villalon to cause the preparation and filing of the above-captioned case. It reads:

“SECRETARY’S CERTIFICATE

I, Ho Siu Pik, of legal age, representing Stratg Nominees Limited with office address at 24th Floor, Prince’s Building, Central, Hong Kong, being the duly elected and qualified Corporate Secretary of HYATT INTERNATIONAL – ASIA

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PACIFIC, LIMITED (FORMERLY, HYATT OF HONG KONG LIMITED) (the "Corporation"), a corporation organized and existing under the laws of the Hong Kong Special Administrative Region, with principal office at 24th Floor, Prince's Building, Central, Hong Kong, after having been sworn in accordance with law, depose and state that:

1. Strath Nominees Limited has the custody of the corporate records of the corporation;
2. According to the corporate records, the Board of Directors of the corporation passed the following resolutions on 4 May 2005;

RESOLVED, That the Board of Directors of HYATT INTERNATIONAL - ASIA PACIFIC, LIMITED (FORMERLY, HYATT OF HONG KONG LIMITED) ("the Corporation") ratify and confirm, as it hereby ratifies and confirms, the authority of the Corporation to institute the appropriate judicial action, including the filing of a Petition for Review with the Court of Tax Appeals, to protest the deficiency income tax and branch profits remittance tax assessments against the Corporation for calendar year 1997 on July 18, 2002.

RESOLVED, FURTHER, that the Board of Directors of the Corporation ratify and confirm, as it hereby ratifies and confirms, the authority of FARID A. SCHOUCAIR, General Manager of Hyatt of Hong Kong, Ltd. (Philippine Branch) (hereinafter referred to as the "Philippine Branch"), to do such things as are necessary for the operations of the Philippine Branch, including the authority to institute such suits or actions which are vital for the protection of the Corporation's interest, as well as the authority to delegate as he may deem fit such powers which are necessary in connection with the foregoing.

RESOLVED, FINALLY, that the Board of Directors ratify and confirm, as it hereby ratifies and confirm, as it hereby ratifies and confirms, the authority of ROLANDO L. VILLALON, the erstwhile Director of Finance of the Philippine Branch, as its authorized representative, who is empowered to cause, as he has caused, the preparation and filing of the subject Petition for Review with the Court of Tax Appeals, for and on behalf of the Corporation, and the signing of such instruments, documents and certification necessary or appropriate in connection with the foregoing.

IN WITNESS WHEREOF, I have hereunto set my hand this day of 13th May, 2005 at 3:00 p.m." (Underscoring Ours for emphasis.)



A scrutiny of the Board Resolution shows that the Board of Directors of Hyatt International Asia Pacific, Limited passed resolutions only on May 4, 2005, among others, ratifying and confirming the authority of Mr. Villalon as “its authorized representative, who is empowered to cause, as he has caused, the preparation and filing of the subject Petition for Review with the Court of Tax Appeals,” and to “sign instruments, documents and certification necessary or appropriate in connection with the foregoing.” Said authority was belatedly issued as it was passed after the present petition was already filed in Court. Hence, petition should be dismissed in the absence of proof of the signatory’s authority to file the present action.

The powers of a corporation are those expressly conferred on it by the Corporation Code and those that are implied by or are incidental to its existence. A corporation exercises said powers through its board of directors and/or its duly authorized officers and agents. Physical acts, like the signing of documents, can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors.¹ In instituting an action, the responsible corporate officer must be duly authorized, as evidenced by the appropriate board resolution, to sign the certification requirement to be attached to the initiatory pleading. In *Philippine Airlines, Inc. v. Flight Attendants and Stewards Association of the Philippines (FASAP) and Leonardo Bhagwani*,² explained:

“xxx When the petitioner is a corporation, the certification should be executed by a natural person. Furthermore, not just any person can be called upon to execute the certification, although

¹ *B.I Savings Bank vs. Sia, et al.*, 336 SCRA 484 (2000).

² 479 SCRA 605.

such a person may have a personal knowledge of the facts attested to.

This Court has explained that a corporation has no power except those conferred on it by the Corporation Code and those that are implied or incidental to its existence. The exercise of these powers is done through the board of directors and/or duly authorized officers and agents. Given these corporate features, the power of the corporation to sue in any court is generally lodged with the board of directors. The board, in turn, can delegate the physical acts needed to sue, which may be performed only by natural persons, to its attorney's-in-fact by a board resolution, if not already authorized under the corporate by-laws.

Thus, only individuals vested with authority by a valid board resolution may sign the certificate of non-forum shopping in behalf of a corporation. In addition, the Court has required that proof of said authority must be attached. Failure to provide a certificate of non-forum shopping is sufficient ground to dismiss the petition. Likewise, the petition is subject to dismissal if a certification was submitted unaccompanied by proof of the signatory's authority

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This Court has allowed the reinstatement of petitions that were dismissed due to lack of proof of authority to sign the certification upon its subsequent submission, saying that this amounted to substantial compliance. The rationale was that the signatories, at the time of the execution of the certification, were in fact authorized to sign, although proof of their authority was lacking.

This is not what happened in this case. A perusal of the Secretary's Certificate reveals that the authority to cause the filing of the petition was granted on February 15, 2000. The petition, on the other other hand, was filed on January 24, 2000 and was dismissed by the Court of Appeals on January 31, 2000. This means that at the time the certification was signed, Cesar R. Lambarte and Susan Del Carmen were not duly authorized by the Board of Directors of PAL and, consequently, their signing and attestations were not in representation of PAL. This effectively translates to a petition that was filed without a certification at all as none was issued by PAL, the principal party to the case.

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The required certification of non-forum shopping must be valid at the time of the filing of the petition. An invalid certificate cannot be remedied by the subsequent submission of a Secretary's Certificate that vests authority only after the petition has been filed."



WHEREFORE, the Petition is hereby **DISMISSED**.

SO ORDERED.


JUANITO C. CASTANEDA, JR.
Associate Justice


ERLINDA P. UY
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

