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

DACON CORPORATION,
Complainant-Appellee,

-versus-

SEC *En Banc* Case No. 10-23-528
Promulgated: 15 February 2024

EDWIN M. CHUA, FERDINAND C. VIDO, JENNIFER I. ABRAHAM, JOCELYN A. TALANIA, ROLANDO A. JUNIO, ALLAN D. YAPHOCKUN, TERESITA T. CANLAS, THEODORE Q. GARCIA, RICHARD N. ALLEN and HERMOSO ADLAWAN,
Respondents-Appellants.

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DECISION

Before this Commission is the Appeal Memorandum dated 23 April 2022 (the "Appeal") filed by Edwin M. Chua, Ferdinand C. Vido, Jennifer I Abraham, Jocelyn A. Talania, Rolando A. Junio, Allan D. Yaphockun, Teresita T. Canlas, Theodore Q. Garcia, Richard N. Allen and Hermoso Adlawan (the "Appellants"), assailing the Order dated 8 August 2023 (the "Assailed Order") issued by the SEC Davao Extension Office (SEC Davao) which allowed DACON Corporation to exercise its rights under Section 73 of the Revised Corporation Code, the dispositive portion of which, in part, reads:

> "WHEREFORE, premises considered, it is hereby ordered that the complainant, by a representative, be allowed to exercise its rights under Section 73 of the Revised Corporation Code to inspect and demand for copies of such records or excerpts from said records, at its expense and at reasonable hours on business days, within thirty (30) days from receipt of this Order by the custodian of the requested corporate 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,

Republic Act No. 8799, otherwise known as the Securities Regulation Code, and the Rules of Court. xxx"

THE PARTIES

Appellants, Edwin M. Chua, Ferdinand C. Vido, Jennifer I Abraham, Jocelyn A. Talania, Rolando A. Junio, Allan D. Yaphockun, Teresita T. Canlas, Theodore Q. Garcia, Richard N. Allen (the "Trustees"), are unit owners and members of the Magallanes Residences Condominium Corporation. They are also the duly elected members of the Board of Trustees of the Corporation. Hermoso Adlawan, on the other hand, is the Property Management Office (PMO) Administrator of Magallanes Residences Condominium.[1]

Appellee, DACON Corporation (DACON) is a domestic corporation duly organized and existing under Philippine Laws, having been issued a Certificate of Incorporation bearing Registration No. 23023. Its office address is at 2281 Dacon Building, Chino Roces Avenue, Makati City.

RELEVANT FACTS

Magallanes Residences Condominium Corporation (the "Corporation"), a domestic non-stock corporation organized and existing under Philippines, having been issued a Certificate of Incorporation bearing Registration No. CN201007772, on 25 May 2010.

Article 5 Section 1 of the By-laws of the Corporation provides that "*the board shall determine the qualifications of membership pursuant to the Documents of Sale and the Master Deed with Declaration of Restrictions of Magallanes Residences*".

Section 8(b) of the Master Deed with Declaration of Restrictions "Magallanes Residences" (the "Master Deed"), provides that:

> "***Unit owners shall automatically become members of the Condominium Corporation****. The voting rights of members of the Condominium Corporation shall be equivalent to one (1) vote per unit.*" (Emphasis supplied)

DACON is the registered owner of Unit 311 of Magallanes Residences Condominium as shown by the Condominium Certificate of Title No. 146-2011000100 (CCT), issued by the Registry of Deeds for Davao City on 17 August 2022.

[1] *Memorandum of Appeal*. Par. 1

In a letter dated 17 March 2023, Appellee DACON, together with other members of the Corporation, demanded that they be allowed to inspect the corporate books and records of the latter on 27 March 2023 at 9 o'clock in the morning, a right that is granted to them under Section 73 of the Revised Corporation Code.[2]

On the scheduled date of the inspection i.e. 27 March 2023, Mr. Hermoso Adlawan, the Property Management Office (PMO) Administrator, allegedly acting on the advice of the Trustees, intentionally and deliberately refused/denied the authorized representative of DACON the exercise of its right to inspect the requested books and records of the Corporation.[3]

This prompted DACON to file a Verified Complaint on 20 June 2023 with the SEC Davao, praying that Appellees allow it to inspect the books and records of the Corporation.

In their Answer, Appellees prayed for the dismissal of the Complaint for lack of cause of action and merit. In support thereof, Appellees maintain that DACON is, to date, not a member of the Corporation as it failed to submit to the latter the Certified True Copy of its CCT. Appellees also deny having refused DACON the exercise of its right to inspect, as the latter failed to show proof of any order from the Board authorizing such refusal.[4]

On 8 August 2023, the SEC Davao issued the Assailed Order.

Appellees forthwith filed their Verified Motion for Reconsideration (the "Motion"), where they claimed that the right to inspect of DACON should not be sustained as the same was attended by bad faith, and made for illegitimate purpose.

The SEC Davao denied the Motion for lack of merit.

Hence, the instant Appeal.

ISSUE

Whether the SEC Davao committed reversible error in allowing the inspection by DACON of the corporate books and records of the Corporation.

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[2] *Ibid.* see Annex "E"
[3] *Ibid.*
[4] *Ibid.* Annex "F"

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RULING

The Appeal is bereft of merit.

Appellants essentially maintain that DACON should be denied the exercise of the right to inspect since the circumstances show that it is acting in bad faith,[5] and will most probably use the documents/information obtained from the Corporation for illegitimate purpose.

In support of thereof, Appellants alleged that DACON is closely associated with DMC-Urban Property Developers, Inc. (DMC-UPDI), the developer of the Corporation's condominium project; and both should be considered one and the same since they are owned and controlled by the same stockholders, represented by the same persons, and their offices are in the same building.[6] It was further alleged that DMC-UPDI has an existing power struggle with Appellants, where the former seeks to wrest control and management over the Corporation[7] for the purpose of recouping from the members/unit owners thereof the expenses which it incurred in rehabilitating the condominium units.[8] Considering that DACON's and DMC-UPDI's interests are the same,[9] Appellants claim that the complaint for inspection was filed by DACON for the purpose of disturbing the operations of the Corporation; vexing or humiliating them;[10] and to fish for evidence that it can use against them.[11]

Section 73 of the RCC, which provides for right of a stockholder, member, director or trustee (or their duly authorized representatives) to inspect and/or reproduce the corporate books and records, states:

> "**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.

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[5] *Id.* Par. 22
[6] *Id.* Par. 25
[7] *Id.* Par. 26
[8] *Id.* Pars. 24, 29 to 32, and 34
[9] *Id.* Par. 26
[10] *Id.* Par. 49
[11] *Id.* Pars. 51, 55 to 57, 59

(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, stock holder 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 records 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 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.

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.**

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 x---x

> 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." (Emphasis supplied)

The right to inspect is of common law origin which dates back to the 1700s.[12] While the legal title to assets and properties of a corporation are lodged with it being a separate legal entity, stockholders/members are granted the right to inspect, in their capacity as the ultimate beneficial owners of the corporation, to enable them to know how the corporation is being managed, and where its assets are. This is the basis of the right to inspect.[13] The common law inspection right was recognized by the US Supreme Court in the 1905 case of *Guthrie vs Harkness*, which ruled that "*the right of inspection rests upon the proposition that those in charge of the corporation are merely the agents of the stockholders who are the real owners of the property*."[14] Our Philippine Supreme Court eventually adopted this ruling in the case of *Tan vs Sycip*,[15] thus:

> "Under the Corporation Code, stockholders or members periodically elect the board of directors or trustees, who are charged with the management of the corporation. The board, in turn, periodically elects officers to carry out management functions on a day-to-day basis. **As owners, though, the stockholders or members have residual powers over fundamental and major corporate changes.**

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[12] Robin Hui Huang and Randall Thomas., *The Law and Practice of Shareholder Inspection Rights: A Comparative Analysis of the United States and China*. Vanderbilt Journal of Transnational Law., Vol. 53, Article 5 (3 May 2020)

[13] Paul McNutt. *Stockholders' Right to Inspect Corporate Books and Records*., Indiana Law Journal Vol. 1 Issue 1 (1-1926). Accessed at: https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1099&context=ilj

[14] 199 U.S. 148 (1905). Accessed at: https://supreme.justia.com/cases/federal/us/199/148/

[15] G.R. No. G.R. No. 153468, August 17, 2006

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While stockholders and members (in some instances) are entitled to receive profits, the management and direction of the corporation are lodged with their representatives and agents -- the board of directors or trustees. **In other words, acts of management pertain to the board; and those of ownership, to the stockholders or members. In the latter case, the board cannot act alone, but must seek approval of the stockholders or members.**" (Emphasis supplied)

Section 73 of the RCC recognizes the critical role that the corporate data and information play in making shareholders/members fully aware of the current state of the corporation, and in enabling them to make an informed investment and business decisions. It implements the principle that, subject only to the limitations expressly provided by law, the right to inspect and reproduce corporate records cannot be made dependent on the prior consent of the corporation and/or its board/officers. In our jurisdiction, as well as in other jurisdictions abroad, the reality of a typical corporation where "absentee" shareholders/members rely upon skilled managers to run its daily affairs makes it inherently necessary that they be allowed to inspect, for them know if their investments and/or the properties and assets of the corporation are being prudently and properly managed.[16]

One of important objectives of the RCC is the implementation of corporate governance principles and standards which seek, among others, to protect rights of shareholders/members, especially the minority. In this regard, the RCC now expressly mandates the promotion of corporate governance and the protection of minority investors, through, among others, the issuance of rules and regulations consistent with international best practices.[17] This mandate is directed both to the Commission, and every corporation registered with it. Thus, the RCC specifically encourages and enjoins all corporations to include a provision in their By-law *"such other matters as may be necessary for the proper or convenient transaction of its corporate affairs for the promotion of good governance and anti-graft and corruption measures."*[18] In relation to the board of directors/trustees of corporations, the RCC specifically enjoins them *"to perform their duties as prescribed by law and the rules of good corporate governance, and by-laws of the corporation."*[19]

Section 73 of the RCC is anchored on, and implements the corporate governance principles on disclosure, transparency and equitable treatment of shareholders/members. Here lies the purpose and objective

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[16] Kenneth Winston Starr and Terrance E. Schmidt., *Inspection Right of Corporate Stockholders: Towards a More Effective Statutory Model.* Florida Law Review. Article 1, Volume 26, Issue 2 (January 1974)
[17] Sec. 179(d) of the RCC
[18] Section 46 [k] of the RCC
[19] Sec. 23 of the RCC

of the right to inspect corporate books and records. The right to inspect enables and assures the board of timely access to accurate and relevant information, which is critical in their decision-making functions. This right equally ensures the timely availability of relevant corporate information to shareholders/members (especially the minority) that will enable them to monitor the corporation's performance, evaluate its financial status, determine whether and how to take proper action such as a proxy fight to replace the incumbent management,[20] actively participate in meetings and/or the affairs of the corporation which requires their action, decide on their investments or membership, and effectively exercise their right to influence.[21]

Thus, in the case of *Gokongwei vs SEC*[22] (the "Gokongwei Case"), the Supreme Court emphasized that the general rule in this jurisdiction is to recognize and uphold the exercise of the right to inspect, or the right of shareholders/members to have full access to information on the affairs and finances of the corporation, to wit:

> "The stockholder's right of inspection of the corporation's books and records is based upon their ownership of the assets and property of the corporation. It is, therefore, an incident of ownership of the corporate property, whether this ownership or interest be termed an equitable ownership, a beneficial ownership, or a quasi-ownership. This right is predicated upon the necessity of self-protection. It is generally held by majority of the courts that where the right is granted by statute to the stockholder, it is given to him as such and must be exercised by him with respect to his interest as a stockholder and for some purpose germane thereto or in the interest of the corporation. In other words, the inspection has to be germane to the petitioner's interest as a stockholder, and has to be proper and lawful in character and not inimical to the interest of the corporation. In *Grey v. Insular Lumber,* this Court held that "the right to examine the books of the corporation must be exercised in good faith, for specific and honest purpose, and not to gratify curiosity, or for specific and honest purpose, and not to gratify curiosity, or for speculative or vexatious purposes. The weight of judicial opinion appears to be, that on application for mandamus to enforce the right, it is proper for the court to inquire into and consider the stockholder's good faith and his

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20 Robin Hui Huang and Randall Thomas., *The Law and Practice of Shareholder Inspection Rights: A Comparative Analysis of the United States and China*. Vanderbilt Journal of Transnational Law., Vol. 53, Article 5 (3 May 2020)

21 The G20/OECD Principles of Corporate Governance were adopted by the Commission in complying with its mandate under the RCC

22 G.R. No. L-45911. April 11, 1979

> purpose and motives in seeking inspection. Thus, it was held that "the right given by statute is not absolute and may be refused when the information is not sought in good faith or is used to the detriment of the corporation." But the "impropriety of purpose such as will defeat enforcement must be set up the corporation defensively if the Court is to take cognizance of it as a qualification. In other words, the specific provisions take from the stockholder the burden of showing propriety of purpose and place upon the corporation the burden of showing impropriety of purpose or motive. **It appears to be the general rule that stockholders are entitled to full information as to the management of the corporation and the manner of expenditure of its funds, and to inspection to obtain such information**, especially where it appears that the company is being mismanaged or that it is being managed for the personal benefit of officers or directors or certain of the stockholders to the exclusion of others." (Emphasis supplied)

So important is the right to inspect in our jurisdiction that the Congress granted the Commission the power and authority to investigate and summarily issue an order (within five (5) days from receipt of the report) directing the inspection of books and records on the basis of a finding that a shareholder/member has been denied the exercise of his/her right to inspect. This discloses a clear Legislative intent to make the right to inspect readily available to shareholders/members.

The foregoing notwithstanding, this Commission agrees with Appellants that the right to inspect is not absolute. Section 73 of the RCC specifically provides that the right to inspect is not available to a competitor, or to person who is not a stockholder/member of a corporation, or one who represents the interests of a competitor. We also find in the same provision that the defenses of improper use, bad faith or illegitimate purpose can be validly invoked to justify the denial of the exercise of the right to inspect. In this regard, We emphasize that the law requires proof of **actual** "improper use" of the documents for the same to constitute a valid defense in an action for violation of Section 73 of the RCC.[23] In the case of *Dee Ping Wee vs Lee Hiong Wee*,[24] the Supreme Court ruled, thus:

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[23] "xxx *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 records 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 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." (Emphasis supplied)
[24] G.R. No. 169345. August 25, 2010

"The exercise of these rights may be denied, however, if it is shown that the stockholders have **improperly used any information secured through a previous examination** or that the demand is purely speculative or merely to satisfy curiosity. These grounds have not been shown to be present in this case." (Emphasis supplied)

The afore-quoted ruling explains and serves as basis for the equally important rule embodied in Sec. 73 of the RCC, which was reiterated by the Supreme Court in *Philippine Associated Smelting and Refining Corporation vs Lim*,[25] that a denial by a corporation of the right to inspect cannot be based on speculation, thus:

"In general, however, **officers and directors have no legal authority to close the office doors against shareholders for whom they are only agents, and withhold from them the right to inspect the books which furnishes the most effective method of gaining information which the law has provided, on mere doubt or suspicion as to the motives of the shareholder**. While there is some conflict of authority, when an inspection by a shareholder is contested, the burden is usually held to be upon the corporation to establish a probability that the applicant is attempting to gain inspection for a purpose not connected with his interests as a shareholder, or that his purpose is otherwise improper. The burden is not upon the petitioner to show the propriety of his examination or that the refusal by the officers or directors was wrongful, except under statutory provisions." (Emphasis supplied)

Moreover, prescinding from the earlier-quoted doctrine in the Gokongwei Case, the exercise of the right to inspect can be invoked both in ordinary circumstances, where the board/officers are prudently and faithfully managing the affairs of the corporation, as well as in a regime where there are abuses and/or mismanagement of the corporation. In other words, the right to inspect is not dependent on an allegation that a corporation is being mismanaged, or its directors/trustees are abusing their positions to the detriment of the corporation and/or its stockholders/members, contrary to the position of Appellants. In the case of *Terelay Investment and Development Corporation vs Yulo*,[26] the Supreme Court ruled that the exercise of the right to inspect is not dependent upon prior showing of a dispute or mismanagement, thus:

[25] G.R. No. 172948. October 5, 2016
[26] G.R. No. 160924. August 5, 2015

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"The right of the shareholder to inspect the books and records of the petitioner should not be made subject to the condition of a showing of any particular dispute or of proving any mismanagement or other occasion rendering an examination proper, but if the right is to be denied, the burden of proof is upon the corporation to show that the purpose of the shareholder is improper, by way of defense." (Emphasis supplied)

In all circumstances where a corporation and/or its directors/officers will be invoking the grounds to deny the exercise of the right to inspect, the existing rule is that such corporation and/or its directors/officers has the burden of positively showing the existence thereof since good faith on the part of the requesting shareholder/member is always presumed, thus:

"**Good faith and a legitimate purpose are presumed. It is the duty of the corporation to allege and prove with sufficient evidence the facts that give rise to a claim of bad faith as to the existence of an illegitimate purpose.**

The confidentiality of business transactions is not a magical incantation that will defeat the request of a stockholder to inspect the records. Although it is true that the business is entitled to the protection of its trade secrets and other intellectual property rights, facts must be pleaded to convince the court that a specific stockholder's request for inspection, under certain conditions, would violate the corporation's own legal right.

Furthermore, the discomfort caused to the management of a corporation when a request for inspection is claimed is part of the regular matters that a business wanting to ensure good governance must endure. The range between discomfort and vexation is a broad one, which may tend to be located in the personalities of those involved.

Certainly, by themselves, these are not sufficient factual basis to conclude bad faith on the part of the requesting stockholder. Courts must be convinced that the scope or manner of the request and the conditions under which it was made are so frivolous that the huge cost to the business will, in equity, be unfair to the other stockholders. There is no iota of evidence that this happened here."[27] Emphasis supplied)

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[27] *Philippine Associated Smelting and Refining Corp. v. Lim* (G.R. No. 172948, October 5, 2016)

In the instant case, Appellants maintain that DACON should be rightfully denied the right to inspect on the ground that the same will be used to ultimately wrest control and management of the Corporation, through the information that will be obtained therefrom. In support of this claim, Appellants argued that the vexatious acts of DMC-UPDI which allegedly disrupted the operations of the Corporation and humiliated them, should be imputed to, and considered an act of DACON since they are essentially one and the same. In other words, Appellants are telling this Commission that DACON cannot exercise its statutory right to inspect because its sister corporation i.e. DMC-UPDI, has allegedly been shown to be in bad faith, and will use the information obtained for illegitimate purposes.

We find Appellants' position to be bereft of merit and basis.

The Commission particularly notes, in practically all of its pleadings, that Appellants attributed to DMC-UPDI the acts that they considered as valid to justify the denial of the right to inspect. These are reiterated in their Appeal, to wit:

> "31. <u>DMC-UPDI therefore had to retrofit and upgrade its inferiorly constructed condominium buildings</u>, presumably in compliance with its warranty against hidden defects under the Civil Code.
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> "32. In the process of these buy-backs and repairs, <u>DMC-UPDI had to spend millions of pesos. It was for this reason that DMC-UPDI wanted to take full control of the Board of Trustees so that it could recoup its expenses from the corporation and the remaining unit owners</u>. This was even confirmed when DMC-UPDI was able to wrest control of the Board of Trustees in the other condominiums it owned in Davao City, to wit: Palmetto Place and Verdon Parc, of which unit owners had experienced mismanagement and unjust imposition of dues.
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> "34. The intention of DMC-UPDI to wrest control of the Board of Trustees, was even made manifest when in the general assembly of July 17, 2021, they wanted to fill up the entire board with their own representatives or employees, and disregard the interests of the independent or retained unit owners, or those who did not opt to have their units be bought back by DMC-UPDI.
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> "40. <u>In the following election conducted during the General</u>

> Assembly of Year 2022, DMC-UPDI again attempted to wrest control of MRCC's Board of Trustees. However, they were again disqualified from participating in the election because they did not yet qualify as members of the corporation (i.e. failure to submit the certified true copies of their CTCs, failure to pay the association dues, joining fee and real property taxes). This however did not deter DMC-UPDI through CABREROS Group from conducting a separate and illegitimate election.
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> "44. The power struggle between the 2 groups was even continued in the 2023 General Assembly and election. Prior to the July 15, 2023 election, DMC-UPDI made some actions which were sought to cast doubts to Respondents-Appellants' integrity and intended to tarnish their reputations in time for the election. xxx. (Emphasis supplied)

The foregoing constitutes a (judicial) admission[28] that DMC-UPDI is the author of the actions which are allegedly tainted with bad faith and ill motives, according to Appellants. Accordingly, this Commission is of the position that DACON cannot be denied of its right to inspect just because DMC-UPDI committed the alleged acts that might justify or warrant such denial. Appellants are thus bereft of any justification, recognized by law and jurisprudence, that will sustain a valid denial of DACON's right to inspect.

Granting, *ex gratia argumenti*, that the alleged acts of DMC-UPDI constitute bad faith, the same will not suffice and operate to deprive DACON of its right to inspect the books and records of the Corporation, on the ground that DACON and DMC-UPDI are not one and same, applying the doctrine of separate juridical personality, contrary to the position of Appellants. In our jurisdiction, as well as in practically all jurisdictions around the world, the statutory grant of a separate juridical personality to corporate entities is considered to be the most important attribute of corporations, from which the other attributes flow as a legal consequence.[29] The law, therefore protects and guards this attribute to promote business and economic development. This finds support in the jurisprudential rule that, in the absence of fraud which must be

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[28] "A judicial admission is a formal statement, either by party or his or her attorney, in course of judicial proceeding which removes an admitted fact from field of controversy. It is a voluntary concession of fact by a party or a party's attorney during judicial proceedings.

Judicial admissions are used as a substitute for legal evidence at trial. Admissions made in the course of judicial proceedings or judicial admissions waive or dispense with, the production of evidence, and the actual proof of facts by conceding for the purpose of litigation that the proposition of the fact alleged by the opponent is true." (*Agbayani vs Lupa Realty Holding Corporation*. G.R. No. 201193, June 10, 2019)

[29] Cesar Villanueva and Teresa Villanueva-Tiansay, *Philippine Corporate Law*, Corporate Juridical Personality, (2018)

sufficiently proven, mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stocks of the corporation[30], or substantial identity of the incorporators or stockholders of two (2) corporations,[31] or the fact that a corporation has interlocking directors, corporate officers and shareholders, or that two (2) corporations have offices in the same building,[32] is not, by itself, a sufficient ground to disregard the separate corporate personality.

Thus, the fact that both DACON and DMC-UPDI are related entities, have interlocking directors and stockholders, and hold office in the same building does not warrant the piercing of their corporate veils for purposes of considering them as a single entity, and justifying the denial of DACON's right to inspect, in the absence of clear and convincing evidence that they have used the corporate vehicle to perpetrate fraud, violate a law or evade an obligation.

In the same manner, We find that the grounds relied upon by the Appellants to support their allegation of bad faith are speculative. There is nothing in the evidence which shows that DACON or even DMC-UPDI has actually improperly used a document/information that was previously obtained from the Corporation. The speculative nature of the ground(s) relied upon by the Appellants is shown in the following statements:

> "42. The **fear** of the Respondents-Appellants and the independent or retained unit owners was that due to DMC-UPDI having owned the majority of the units by reason of the buy-back, they could suppress the minority and just dictate whatever their whims and caprices are, including passing the buck to all unit owners of all their expenses in the repairs and retrofitting.
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> "59. Basically, Complainant-Appellee's legitimate reason for inspection is **highly dubitable** as again, **it would appear that they were only on a fishing expedition** to find evidence which they can use against the Respondents-Appellants in the three-year power struggle and the desire of the DMC-UPDI to wrest control of the Board.
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> "63. In fact, they should even be disallowed inspection due to the existence of these cases. Allowing the Complainant-Appellee to inspect corporate records at this time, would only present an opportunity for them to get additional

[30] *Saverio vs Puyat* (G.R. No. 186433. Nov. 27, 2013)
[31] *McLeod vs NLRC* (146667. January 23, 2007)
[32] *Ibid.*

information or evidence which they **might use** in the cases which are now pending in courts and quasi-judicial bodies." (Emphasis supplied)

Appellants also maintained that they were correct in denying DACON the right to inspect on the ground that it is not a member of the Corporation, contrary to the finding of the SEC Davao. Appellants claimed that the failure of DACON to formally file the Certified True Copy of its CCT with it, prevented DACON from being a member of the Corporation.

After a careful consideration of the arguments and the evidence presented by the parties, this Commission finds no cogent reason to disturb the ruling of the SEC Davao.

As correctly found by the SEC Davao, We agree with SEC Davao that pursuant to Section 8(b) of the Master Deed, DACON automatically became a member of the Corporation after it secured from the Register of Deeds of Davao the CCT over Unit 311 of Magallanes Residences Condominium on 17 August 2022. The use of the word "automatically" in the Master Deed means that unit owners who are able to secure titles to their respective units need not do any positive act to obtain their status as a member of the Corporation. Thus, Article 5 Section 1 of the By-laws of the Corporation specifically directs the Board to determine the qualifications of membership in accordance with the Master Deed and the Documents of Sale. In other words, the provisions of the By-laws and the Master Deed which are binding upon all the members thereof,[33] do not grant the Appellants the authority to prescribe a requirement for membership beyond what is provided in the said documents. The doctrine in *Teng vs SEC,*[34] where the Supreme Court ruled that the board or officers cannot create restrictions not sanctioned by law on the registration of shares in the books, is applicable by analogy to the instant case which involves a non-stock corporation, thus:

> "It is the delivery of the certificate, coupled with the endorsement by the owner or his duly authorized representative that is the operative act of transfer of shares from the original owner to the transferee. The Court even emphatically declared. in *Fil-Estate Golf and Development,*

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[33] "The charter and the by-laws were thus the fundamental documents governing the conduct of Forest Hills' corporate affairs; they established norms of procedure for exercising rights, and reflected the purposes and intentions of the incorporators. Until repealed, the by-laws were a continuing rule for the government of Forest Hills and its officers, the proper function being to regulate the transaction of the incidental business of Forest Hills. The bylaws constituted a binding contract as between Forest Hills and its members, and as between the members themselves. Every stockholder governed by the by-laws was entitled to access them. The by-laws were self-imposed private laws binding on all members, directors and officers of Forest Hills. The prevailing rule is that the provisions of the articles of incorporation and the by-laws must be strictly complied with and applied to the letter." (Forest Hills Golf and Country Club, Inc. vs Gardpro, Inc. (G.R. No. 164868. October 22, 2014)

[34]G.R. No.184332. February 17, 2016

> *Inc., et al. v. Vertex Sales and Trading, Inc.* that in "a sale of shares of stock, physical delivery of a stock certificate is one of the essential requisites for the transfer of ownership of the stocks purchased." **The delivery contemplated in Section 63, however, pertains to the delivery of the certificate of shares by the transferor to the transferee, that is, from the original stockholder named in the certificate to the person or entity the stockholder was transferring the shares to, whether by sale or some other valid form of absolute conveyance of ownership.** "[S]hares of stock may be transferred by delivery to the transferee of the certificate properly indorsed. **Title may be vested in the transferee by the delivery of the duly indorsed certificate of stock.**"
>
> It is thus clear that Teng's position - that Ting Ping must first surrender Chiu's and Maluto's respective certificates of stock before the transfer to Ting Ping may be registered in the books of the corporation - does not have legal basis. The delivery or surrender adverted to by Teng, *i.e.,* from Ting Ping to TCL, is not a requisite before the conveyance may be recorded in its books. **To compel Ting Ping to deliver to the corporation the certificates as a condition for the registration of the transfer would amount to a restriction on the right of Ting Ping to have the stocks transferred to his name, which is not sanctioned by law.** The only limitation imposed by Section 63 is when the corporation holds any unpaid claim against the shares intended to be transferred.
>
> **In *Rural Bank of Salinas,* the Court ruled that the right of a transferee/assignee to have stocks transferred to his name is an inherent right flowing from his ownership of the stocks.** In said case, the private respondent presented to the bank the deeds of assignment for registration, transfer of the shares assigned in the bank's books, cancellation of the stock certificates, and issuance of new stock certificates, which the bank refused. In ruling favorably for the private respondent, the Court stressed that **a corporation,** either by its board, its by-laws, **or the act of its officers, cannot create restrictions in stock transfers.**" (Emphasis supplied)

In the instant case, DACON already furnished the Corporation and Appellants with a copy of the CCT for Unit 311 of Magallanes Residences Condominium showing its ownership thereof. Under the Master Deed, in relation to the By-laws of the Corporation, such document automatically made DACON a member of the Corporation, and entitled it to the right to inspect. Thus, We hold that the requirement in Resolution No. 18-2021 relating to the presentation of a Certified True Copy of the CCT is a formal requirement that does not affect or negate the fact of membership of a registered unit owner in the Corporation. As mentioned earlier, the Appellants cannot, by a mere Resolution, modify or vary the provision(s) in the Master Deed and/or the By-laws of the Corporation which automatically recognizes the registered owners of condominium units under a CCT as members of the Corporation. Being a registered owner of Unit 311 of Magallanes Residences Condominium, DACON is well within its right to inspect the books and records of the Corporation.

Relative thereto, We reiterate the ruling in *Andaya vs Rural Bank of Cabadbaran*,[35] that the recordal of a transfer of shares (as well as membership in a non-stock corporation) is ministerial and can be compelled by mandamus, thus:

> "It is already settled jurisprudence that the registration of a transfer of shares of stock is a ministerial duty on the part of the corporation. Aggrieved parties may then resort to the remedy of mandamus to compel corporations that wrongfully or unjustifiably refuse to record the transfer or to issue new certificates of stock. **This remedy is available even upon the instance of a *bona fide* transferee who is able to establish a clear legal right to the registration of the transfer**. This legal right inherently flows from the transferee's established ownership of the stocks, a right that has been recognized by this Court as early as in *Price v. Martin:*
>
> A person who has purchased stock, and who desires to be recognized as a stockholder, for the purpose of voting, must secure a standing by having the transfer recorded upon the books. If the transfer is not duly made upon request, he has, as his remedy, to compel it to be made." (Emphasis supplied)

Finally, We do not agree with Appellants that the requirement for prior demand to inspect corporate records was not complied with by DACON. The evidence on record shows that the demand letter of DACON was addressed to the Corporation, and specifically mentioned the Appellants who are the members of the Board. Appellants' reliance on the provisions on "Service and Filing" under the 2016 Rules of Procedure of the SEC is misplaced and not applicable since a demand letter is not a pleading, and when the same was served, there was no case pending with the Commission. Thus, We hold that the Corporation and the Appellants were informed of the demand to inspect which was sent to them by

[35] G.R. No. 188769. August 3, 2016

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DACON. Their refusal to recognize and address the same without a valid ground justified DACON's invocation of the exercise by this Commission of its regulatory authority under Section 73 of the RCC.

WHEREFORE, premises considered, the Appeal Memorandum dated 23 April 2022 filed by Edwin M. Chua, Ferdinand C. Vido, Jennifer I Abraham, Jocelyn A. Talania, Rolando A. Junio, Allan D. Yaphockun, Teresita T. Canlas, Theodore Q. Garcia, Richard N. Allen and Hermoso Adlawan is hereby **DENIED** for lack of merit. The Order dated 8 August 2023 issued by the SEC Davao Extension Office is hereby **AFFIRMED.**

SO ORDERED

Makati City; February 15, 2024.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner