REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COLLEGE ASSURANCE PLAN, PHILS., INC., represented by its Vice-President for Accounting Services, Mr. Alfredo S. Pelayo,[1]
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1120
(CTA Case No. 7190)

Present:

Del Rosario, *PJ*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, *and*
Ringpis-Liban, *JJ.*

Promulgated:

OCT 01 2014 2:35pm

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RESOLUTION

This resolves the *Manifestation/Compliance and/or Motion for Reconsideration* posted by petitioner on July 1, 2014 and received by this Court on July 4, 2014, with respondent's comment filed on September 9, 2014.

It is to be stressed that this Court, in a Resolution promulgated on June 4, 2014, dismissed the Petition for Review filed on February 6, 2014 and the Compliance Cum Petition for Review filed on February 21, 2014 as the Secretary's Certificate filed before the Court does not state the authority of Mr. Joselito M. Santos to sign the verification/certification against forum shopping.

In the present pleading - *Manifestation/Compliance and/or Motion for Reconsideration*, counsel for petitioner expresses his deep apologies in

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[1] Per assailed Resolution of the CTA Second Division promulgated on January 13, 2014, petitioner is represented by its Vice-President for Accounting Services, Mr. **Alfredo** S. Pelayo *(Rollo, p. 32).*

inadvertently preparing and submitting the verification/certification against forum shopping signed by Joselito M. Santos, when he was the one authorized by petitioner's Board of Directors as stated in their resolution, and begs the indulgence of the Court to relax the application of the rules on verification citing the case of *Vda. De Formoso vs. Philippine National Bank.*[2] Counsel for petitioner submits a new verification/certification of non-forum shopping as Annex "A" of said *Manifestation/Compliance and/or Motion for Reconsideration* in compliance with the Court's Resolution dated June 4, 2014. He prays that the assailed Resolution promulgated on June 4, 2014 be reconsidered in the interest of substantial justice and due process of law.

In her comment, respondent counter-argues that submission of the new verification/certification signed by Atty. Leopoldo E. San Buenaventura does not cure the defect. Respondent emphasized that at the time petitioner submitted the petition for review and the compliance cum petition for review, the person who signed the verification/certification of non-forum shopping had no authority to do so; thus, the lack of authority to sign the verification/certification rendered the petition worthless and should be deemed as non-existent. Respondent cites the case of *San Pablo Mfg. Corp. vs. Commissioner of Internal Revenue*[3] emphasizing the ruling of the Court that the petition which lacked proper verification is to be treated as an unsigned pleading subject to dismissal.

Respondent also points out that, by submitting the necessary documents only after the Court dismissed the petition, petitioner is trivializing the rules and this abhorrent behavior should not be countenanced.

Respondent finally contends that at the time the petition for review and the compliance cum petition for review were filed, no one was authorized by petitioner's board to sign the verification/certification of non-forum shopping since the Secretary's Certificate was executed only on 14 April 2014.

After weighing the arguments of the parties, this Court finds petitioner's motion bereft of merit.

[2] G.R. No. 154704, June 1, 2011.
[3] G.R. No. 147749, June 22, 2006.

As aptly argued by respondent, petitioner's submission of the new verification/certification of non-forum shopping does not cure the earlier defect of its petition.

The person who signed the verification/certification attached to the Petition for Review and Compliance Cum Petition for Review by the name of Joselito M. Santos had not been authorized by petitioner's Board of Directors since the authority to do so was given to San Buenaventura Law Offices, represented by its Managing Partner, Atty. Leopoldo E. San Buenaventura, as shown in the Secretary's Certificate subsequently submitted by petitioner on April 24, 2014.

Considering the lack of authority of Mr. Santos to sign the verification/certification of non-forum shopping, the Petition for Review and Compliance Cum Petition for Review are considered "unsigned pleading" pursuant to Section 4, Rule 7 of the Rules of Court.[4]

In *San Pablo Manufacturing Corporation vs. Commissioner of Internal Revenue*[5], aptly relied upon by respondent, the Supreme Court declared that a pleading which lacked proper verification on the ground that it was signed by a person who had not been issued any authority by the board of directors to represent the corporation is to be treated as an unsigned pleading subject to dismissal. Pertinent portion of the ruling of the Supreme Court reads:

> "Under Rule 43, Section 5 of the Rules of Court, appeals from the CTA and quasi-judicial agencies to the Court of Appeals should be verified. A pleading required to be verified which lacks proper verification shall be treated as an unsigned pleading.
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> Moreover, a petition for review under Rule 43 requires a sworn certification against forum shopping. Failure of the petitioner to comply with any of the requirements of a petition for review is sufficient ground for the dismissal of the petition.

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[4] Sec. 4. Verification.

Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his knowledge and belief.

A pleading required to be verified which contains a verification based on "information and belief," or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading.

[5] G.R. No. 147749, June 22, 2006.

> A corporation may exercise the powers expressly conferred upon it by the Corporation Code and those that are implied by or are incidental to its existence through its board of directors and/or duly authorized officers and agents. Hence, 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 specific act of the board of directors. In the absence of authority from the board of directors, no person, not even the officers of the corporation, can bind the corporation.
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> SPMC's petition in the Court of Appeals did not indicate that the person who signed the verification/certification on non-forum shopping was authorized to do so. SPMC merely relied on the alleged inherent power of its chief financial officer to represent SPMC in all matters regarding the finances of the corporation including, among others, the filing of suits to defend or protect it from assessments and to recover erroneously paid taxes. SPMC even admitted that no power of attorney, secretary's certificate or board resolution to prove the affiant's authority was attached to the petition. Thus, the petition was not properly verified. **Since the petition lacked proper verification, it was to be treated as an unsigned pleading subject to dismissal**.
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> In PET Plans, Inc. v. Court of Appeals, the Court upheld the dismissal by the Court of Appeals of the petition on the ground that the verification and certification against forum shopping was signed by PET Plans, Inc.'s first vice-president for legal affairs/corporate secretary without any certification that he was authorized to sign in behalf of the corporation.
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> In BPI Leasing Corporation v. Court of Appeals, the Court ruled that the petition should be dismissed outright on the ground that the verification/certification against forum shopping was signed by BPI Leasing Corporation's counsel with no specific authority to do so. Since the counsel was purportedly acting for the corporation, he needed a resolution issued by the board of directors that specifically authorized him to institute the petition and execute the certification. Only then would his actions be legally binding on the corporation.
>
> In this case, therefore, **the appellate court did not commit an error when it dismissed the petition on the ground that it was signed by a person who had not been issued any authority by the board of directors to represent the corporation**." *(Boldfacing supplied)*

Applying the above-quoted jurisprudence to the case at bar, since the verification/certification of non-forum shopping was signed by a person with no specific authority from petitioner's Board of Directors, the Petition for Review and Compliance Cum Petition for Review are considered unsigned pleading subject to dismissal.

The new verification/certification of non-forum shopping signed by Leopoldo E. San Buenaventura, which was attached to petitioner's

Manifestation/Compliance and/or Motion for Reconsideration filed on July 1, 2014, could not justify reinstatement of the dismissed petitions.

To recall, petitioner was granted a final and non-extendible period of fifteen (15) days until February 21, 2014 to file its petition for review pursuant to the Court's Minute Resolution dated February 10, 2014. Petitioner filed its Petition for Review on February 6, 2014 and the same was replaced by petitioner's Compliance Cum Petition for Review filed on February 21, 2014. Notably, the Compliance Cum Petition for Review was filed by petitioner on the last day allowed by this Court. Considering however that the Petition for Review and Compliance Cum Petition for Review are considered as "unsigned pleading" due to lack of proper verification, in effect there was no such petition for review filed within the given period. This makes the assailed judgment of the Court in Division final and executory.

The filing of the new verification/certification of non-forum shopping signed by Leopoldo E. San Buenaventura on July 1, 2014 could only mean that the Petition for Review as replaced by Compliance Cum Petition for Review becomes compliant with the rules only on July 1, 2014, which is way beyond the given period to file petition for review.

WHEREFORE, the Manifestation/Compliance and/or Motion for Reconsideration of petitioner filed on July 1, 2014 is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice