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

SEC EN BANC CASE NO. 11-12-272

RENE GOLANGCO
Complainant-Appellee,

-versus-

WILLIAM GOLANGCO CONSTRUCTION CORPORATION, and ANTHONY B. PERALTA,
Respondents-Appellants.

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DECISION

This is an Appeal from the 11 October 2012 Order of the Enforcement and Prosecution Department ("EPD") of the Securities and Exchange Commission ("SEC"), the dispositive portion of which states:

> "**WHEREFORE**, premises considered, in view of the failure of respondent WGCC to comply with the provisions of the Foreign Investments Act of 1991 when it increased its foreign equity to 47.86% in 2005, the matter is hereby referred to the CRMD for its appropriate action.
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> The respondent WGCC and Atty. Anthony B. Peralta are **FOUND** administratively liable for four (4) counts for violating Section 54.1 (c) of the Securities Regulation Code for willfully making untrue statements in WGCC's General Information Sheets for the years 2005, 2007, 2008 and 2009 is hereby **DIRECTED** to pay a fine in the amount of Four Million Two Hundred Thousand Pesos (P4,223,000.00) within 15 days upon receipt hereof, in accordance with Section 54(ii) of the Securities Regulation Code and Memorandum Circular 6, series of 2005
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> Further, for lack of jurisdiction, the complaint against Marilyn U. Golangco and Eric U. Golangco for violation of the Anti-Dummy Law is hereby **DISMISSED**."[1]

[1] Order of the EPD dated 11 October 2012, Records pp. 2-11.

ANTECEDENT FACTS AND PROCEEDINGS

As borne out by the evidence on record, the following are the antecedent facts and proceedings:

Respondent-Appellant William Golangco Construction Corporation ("WGCC") is a corporation duly registered with the SEC on 06 May 1963 with Company Registration No. 22974.

Respondent-Appellant Anthony B. Peralta ("Atty. Peralta"), on the other hand, was the elected corporate secretary of WGCC from 22 April 2005 to 28 February 2011.[2]

On 31 May 2012, Complainant-Appellee Rene Golangco ("Rene Golangco") filed a verified complaint-affidavit with the EPD alleging that Respondent-Appellant Atty. Peralta, as corporate secretary of Respondent-Appellant WGCC, committed perjury when the former *knowingly and willfully declared false information in the General Information Sheets ("GIS") for the years 2005-2009.*

As stated in Rene Golangco's complaint-affidavit[3] dated 31 May 2012, Atty. Peralta knowingly lied and provided falsified information *that Marilyn U. Golangco with 24.19% equity interest, and Eric U. Golangco with 25.62% equity interest, who are both shareholders of WGCC, are Filipinos where in fact both shareholders are American Citizens.* Thus, Rene Golangco claims that the combined shareholdings of Marilyn U. Golangco and Eric U. Golangco amounting to 49.81% of the outstanding common shares of WGCC is a violation of the Republic Act 7042, otherwise known as the Foreign Investments Act of 1991 ("FIA") and Commonwealth Act No. 108, as amended, otherwise known as the Anti-Dummy Law.

In her Counter-Affidavit[4] dated 02 July 2012, Marilyn U. Golangco denied the charges against her for violation of the FIA and the Anti-Dummy Law, but admitted that she became an American Citizen on 02 September 2003, to wit:

1. *She was still a Filipino Citizen when she acquired 98,014 common shares of stock in WGCC. When she became an American citizen on September 2, 2003, her father assigned 89,300 to her.* At present, she is holding 187,000 common shares of stocks in WGCC;

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[2] Counter-Affidavit of Anthony B. Peralta dated 02 July 2012, Records p. 38-39.
[3] Records, pp. 78-79
[4] *Ibid*, pp. 67-69.

2. The business WGCC is engaged in has no foreign equity restrictions as the limit in the Negative List applies only to contracts for construction and repair of locally-funded public works except: (a) infrastructure/development projects covered in R.A. 7718; and (b) projects which are foreign funded or assisted and required to undergo international competitive buildings;

3. WGCC is no longer engaged in the construction and/or repair of locally funded public works projects since 1978. It ceased to bid for, participate in, and secure new construction contracts offered to WGCC since 1998 up to the present;

4. The stockholders of WGCC are currently in the process of dissolving its corporate existence in ten (10) months, considering that the registration of the corporation will expire on May 6, 2013. In fact, the corporation had filed "FOR RETIREMENT" with the Business Permits and Licensing Department of the City of Mandaluyong on January 19, 2010; and

5. Her ownership of 187, 000 common shares of stocks together with Eric U. Golangco's shares, as American Citizens, which amounts to 49.81% of the outstanding common shares of WGCC is not a violation of the Foreign Investment Act of 1991. Further, the SEC has no jurisdiction over the alleged violation of the Anti-Dummy Law.

Eric U. Golangco likewise submitted his Counter-Affidavit[5] dated 25 June 2012 vehemently denying the charges against him for violation of the Foreign Investment Act of 1991 and the Anti-Dummy Law. *He claimed that he acquired all of his 195, 611 common shares of stocks in WGCC while he was still a Filipino Citizen and he became an American Citizen by naturalization on 29 March 2005.* Further, he reiterated the arguments submitted by Marilyn U. Golangco.

Conversely, in addressing the charges against him for perjury for the years 2005-2009 for allegedly knowingly and willfully declaring false information in the GIS of WGCC relative to the citizenship of Marilyn U. Golangco and Eric U. Golangco, Atty. Peralta argued that the perjury case filed against him should be dismissed as the SEC has no jurisdiction over the same, citing the cases of *Eriberto Masangkay v. People*[6], *Sy Tiong Shiou, et al. v. Sy Chim and Felicidad Chan Sy*[7], and *Leonardo Andres, et al. v. Serafin Cuevas, et al.*[8]

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[5] *Ibid*, pp. 15-17.
[6] G.R. No. 164443, June 18, 2010.
[7] G.R. No. 174168, March 30, 2009.
[8] G.R. No. 150869, June 9, 2005.

In addition to the foregoing, Atty. Peralta set forth the following defenses in his Counter-Affidavit[9], to wit:

> "I was elected Corporate Secretary of WGCC from April 22, 2005 to February 28, 2011. As Corporate Secretary, I *merely relied on the documents and records turned-over to me by WGCC's former Corporate Secretary, Mr. Antonio L. Pe.* The above-mentioned documents, specifically the GIS, all indicate that Ms. Marilyn Golangco and Eric Golangco are Filipino citizens. *I have no reason to doubt this fact as they speak the Filipino language fluently and are resident of the Philippines, not to mention their various business ventures in the country.*
>
> *Mr. Marilyn Golangco and Mr. Eric Golangco never disclosed to me that they have become American citizens in 2003 and 2005, respectively. My relationship with them was on a purely professional and I only saw them during board meetings. They did not divulge their American citizenship to me.* The records of WGCC, the GIS included, are kept in the office of the corporation which Ms. Golangco as President and Mr. Golangco as board member have access to. They did not call my attention regarding the entries I made in the GIS as regards the citizenship of Ms. Marilyn Golangco and Mr. Eric Golangco."

On 23 July 2012, Rene Golangco submitted his Reply[10] to the Counter-Affidavits of Marilyn U. Golangco, Eric U. Golangco and Atty. Peralta.

On 11 October 2012, the EPD resolved the complaint filed by Rene Golangco and issued the assailed Order against WGCC and Atty. Peralta.

Aggrieved, WGCC and Atty. Peralta filed this Appeal raising the following issues:

i. Whether Section 54.1 (c) of the Securities Regulation Code ("SRC")[11] applies to herein Respondents-Appellants;

ii. Whether Respondents-Appellants WGCC and Peralta made any untrue statement of a material fact, or omitted to state any material fact to be stated in the pertinent general information sheets; and

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[9] Counter-Affidavit of Atty. Peralta dated 02 July 2012, Records pp. 38-39.
[10] *Ibid*, pp. 12-14.
[11] Securities Regulation Code, Republic Act 8799, 19 July 2000.

iii. Whether there was a violation of the FIA.

ISSUE:

Whether or not the 11 October 2012 Order of the EPD finding Respondent-Appellant WGCC to have violated the provisions of the FIA, and Respondent-Appellants WGCC and Atty. Peralta administratively liable for making untrue statements in WGCC's GIS's for the years 2005, 2007, 2008 and 2009, is in accordance with the law.

RULING:

After an assiduous review of the evidence and the applicable laws, rules and jurisprudence, we find the instant Appeal to be **partly meritorious.**

In their Appeal Memorandum, Respondents-Appellants allege that the entries in the GIS are made in good faith and that the law does not require that the officer preparing the document attest to the truth *per se* of the facts stated. They further allege that the certification is qualified by "good faith" belief and/or "to the best of knowledge and belief." Thus, Respondents-Appellants contend that they did not lie and there is no basis for the imposition of penalties.

We do not agree.

In the Counter-Affidavit filed by Atty. Peralta, he alleged that he merely relied on the documents and records turned-over to him by the former corporate secretary which includes GIS's that indicate that Marilyn Golangco and Eric Golangco are Filipino citizens. Thus, he claimed that he had no reason to doubt such fact as they speak the Filipino language fluently and are residents of the Philippines, not to mention their various business ventures in the country. He further alleged that his relationship with Marilyn U. Golangco and Eric U. Golangco was on a purely professional basis and he only saw them during board meetings.

However, as pointed out by the EPD in its assailed Order and as borne out by the evidence on record, the defense of Atty. Peralta fails in light of the 23 October 2006 Resolution of the Mandaluyong Prosecutor's Office.[12] As found by the EPD in the said Order, to wit:

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[12] Case filed by Marilyn U. Golangco on 24 October 2005 representing William Golangco Construction Corporation (WGCC) against Rene U. Golangco for the crime of theft for taking WGCC's Stock and Transfer Book without the former's consent.

> "A perusal of the contents of the 23 October 2006 Resolution of the Office of the City Prosecutor of Mandaluyong would readily show that **Atty. Peralta was the counsel of Marilyn U. Golangco, the complainant in said case as he was even furnished a copy of the said Resolution. A further reading of the contents of said resolution reveals that the herein complainant (Rene Golangco) had questioned the personality of Marilyn U. Golangco to file the said case as she was an overstaying illegal alien which statement alone is sufficient to have appraised Atty. Peralta of the questionable citizenship of Marilyn U. Golangco.** Nevertheless, Atty. Peralta proceeded in submitting to the SEC, the 2005, 2007, 2008 and 2009 GIS of WGCC falsely stating therein the citizenship of Marilyn U. Golangco and Eric U. Golangco as Filipino Citizens."[13]

Evidently, the arguments raised by Atty. Peralta deserve scant consideration because, based on the foregoing, circumstances suggest that he should have inquired and verified the citizenship of Marilyn U. Golangco.

Knowing fully well that questions were already raised against Marilyn U. Golangco's Filipino citizenship, Atty. Peralta as Corporate Secretary of WGCC, was under obligation to validate and know her citizenship, considering that he is the corporate officer primarily responsible to report the same with the SEC and attest to the truth and veracity of the information given in the GIS.

This is further bolstered by the fact that in the last portion of the GIS, it is the Corporate Secretary who is required to make an attestation under oath and the one "under obligation to declare, under the penalty of perjury, that all matters set forth in the General Information Sheet ... were made **in good faith** and **duly verified**" by him.

Consequently, for his failure to inquire and verify Marilyn U. Golangco's Filipino citizenship, and for allowing the same entries to remain uncorrected when WGCC submitted its GIS's for years 2007, 2008 and 2009, Atty. Peralta cannot claim good faith in making the entries in WGCC's GIS. However, considering that the case before the Mandaluyong Prosecutor's Office was filed 24 October 2005[14], Atty. Peralta cannot be charged for willfully making false statements and he can claim good faith in making the entries in the 2005 GIS because at the time of its filing on 13 May 2005, he had no knowledge that the citizenship of Marilyn U. Golangco is being questioned.

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[13] Emphasis ours.
[14] Memorandum for Preliminary Investigation, Records, p.49.

Further, Atty. Peralta also alleged in his sworn Counter-Affidavit that his relationship with Marilyn U. Golangco and Eric U. Golangco was purely professional and he only saw them during board meetings. However, this argument is negated by the fact that Atty. Peralta became the counsel of Marilyn U. Golangco in the criminal case filed before the City Prosecutor of Mandaluyong.

Hence, the EPD correctly found that Atty. Peralta is administratively liable for willfully making untrue statements in WGCC's GIS's for the years 2007, 2008 and 2009.

Notwithstanding, we are not in accord with the findings of the EPD that the basis for holding Respondents-Appellants liable is Section 54.1 (c) of the Securities Regulation Code, which reads:

> "54.1. If, after due notice and hearing, the Commission finds that: (a) There is a violation of this Code, its rules, or its orders; (b) Any registered broker or dealer, associated person thereof has failed reasonably to supervise, with a view to preventing violations, another person subject to supervision who commits any such violation; (c) **Any registrant or other person has, in a registration statement or in other reports, applications, accounts, records or documents required by law or rules to be filed with the Commission, made any untrue statement of a material fact, or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading; or, in the case of an underwriter, has failed to conduct an inquiry with reasonable diligence to insure that a registration statement is accurate and complete in all material respects**[15]; or (d) Any person has refused to permit any lawful examinations into its affairs, it shall, in its discretion, and subject only to the limitations hereinafter prescribed, impose any or all of the following sanctions as may be appropriate in light of the facts and circumstances:
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> i. Suspension, or revocation of any registration for the offering of securities;
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> **ii. A fine of no less than Ten thousand pesos (P10,000.00) nor more than One million pesos (P1,000,000.00) plus not more than Two thousand pesos (P2,000.00) for each day of continuing violation**[16]**;**
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> iii. In the case of a violation of Sections 19.2, 20, 24,

[15] Emphasis ours.
[16] Emphasis ours.

26 and 27, disqualification from being an officer, member of the Board of Directors, or person performing similar functions, of an issuer required to file reports under Section 17 of this Code or any other act, rule or regulation administered by the Commission;

iv. In the case of a violation of Section 34, a fine of no more than three (3) times the profit gained or loss avoided as a result of the purchase, sale or communication proscribed by such Section; and

v. Other penalties within the power of the Commission to impose."

At this juncture, it must be emphasized that the records do not indicate that WGCC is a public company or a grantee of a secondary license, or is otherwise a securities market participant.

Furthermore, the phrase *"in a registration statement, or in other reports, applications, accounts, records or documents required by law or rules to be filed with the Commission, made any untrue statement of a material fact, or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading"* under Section 54.1 (c) does not apply to a GIS, as the aforementioned documents relate to statements, reports, applications, accounts or records submitted by public companies, grantees of secondary licenses, and securities market participants, as required by the provision of the SRC and the rules and regulations thereunder.

Thus, Respondents-Appellants cannot be held administratively liable pursuant to Section 54.1 (c) of the SRC.

Rather, we find that the Respondent-Appellants are in violation of the **FIA** and of the **Corporation Code.**

Anent the issue on the violation of the FIA, Respondents-Appellants argue that there was no breach of said law because the subject activity is not covered by the Foreign Investment Negative List ("FINL").

Again, we do not agree.

As aptly reasoned by the EPD:

"As can be gleaned from its primary purpose, the respondent WGCC is generally engaged in construction, and thus, does not fall under either List A or List B of the Foreign Investment Negative List (FINL). In view thereof, foreign investors are allowed to invest one hundred (100%) foreign equity in this kind of business. However, this did not mean that respondent WGCC is not covered by the FIA."

Pursuant to Section 3(a) of the FIA, a corporation with more than forty percent (40%) foreign equity participation is considered as a "Non-Philippine National". In relation thereto, Section 5 of the same Act mandates that:

"SEC. 5. *Registration of Investments of Non-Philippine Nationals.* - Without need of prior approval, a non-Philippine national, as that term is defined in Section 3 [a], and not otherwise disqualified by law may, **upon registration with the Securities and Exchange Commission [SEC],** or with the Bureau of Trade Regulation and Consumer Protection [BTRCP] of the Department of Trade and Industry in the case of single proprietorships, do business as defined in Section 3 [d] of this Act or invest in a domestic enterprise up to one hundred percent (100%) of its capital, unless participation of non-Philippine nationals in the enterprise is prohibited or limited to a smaller percentage by existing law and/or under the provisions of this Act. xxx"

From the foregoing, a non-Philippine National is required by the FIA to register as such to the SEC before conducting its business in the Philippines, regardless of whether the said entity would fall under either List A or List B of the FINL.

Undisputedly, when Marilyn U. Golangco, who owned a total of 187,304 common shares in WGCC, and Eric U. Golangco, who owned a total of 195,611 common shares of stocks in the same company, became American Citizens, the foreign equity of WGCC increased to 47.86% in 2005 or more than 40%, making respondent WGCC a "Non-Philippine National". Consequently, Respondent-Appellant WGCC is under obligation to report its 47.86% foreign equity and register before the SEC as a Non-Philippine National.

Thus, for the failure to report the change in the nationality of 47.86% of its shares from Filipino to foreign, and to register as a non-Philippine National, Respondents-Appellants are liable for violation of the FIA.

Corollary thereto, Section 14 of the FIA provides:

Section 14. Administrative Sanctions. - A **person who violates any provision of this Act** or of the terms and conditions of registration or of the rules and regulations issued pursuant thereto, or **aids or abets in any manner any violation** shall be subject to a fine not exceeding One hundred thousand pesos (P100, 000).

If the offense is committed by a juridical entity, it shall be subject to a fine in an amount not exceeding ½ of 1% of total paid-in capital but not more than Five million pesos (P5,000,000). The president and/or officials responsible therefore shall also be subject to a fine not exceeding Two hundred thousand pesos (P200, 000).

In addition to the foregoing, any person, firm or juridical entity involved shall be subject to forfeiture of all benefits granted under this Act.

SEC shall have the power to impose administrative sanctions as provided herein for any violation of this Act or its implementing rules and regulations.

Consequently, in order to implement Section 14 of the FIA, SEC Memorandum Circular No. 8, Series of 1998, was promulgated by the SEC on 10 August 1998. The said SEC Circular provides for the penalties to be imposed on corporations and partnerships which increased the percentage of their foreign equity without first complying with the registration procedure provided in the FIA. More so, Section 14 of the FIA is further implemented by the CRMD by requiring the submission of SEC Form No. F-102.[17]

In addition, it must be noted that Section 141 of the Corporation Code mandates that "every corporation, domestic or foreign, lawfully doing business in the Philippines shall submit to the Securities and Exchange Commission an annual report of its operations xxx and such other requirements as the Securities and Exchange Commission may require." Similarly, Section 26 of the Corporation Code provides that "within thirty (30) days after the election of the directors, trustees and officers of the corporation, the secretary, or any other officer of the corporation, shall submit to the Securities and Exchange Commission, the names, nationalities and residences of the directors, trustees, and officers elected." This monitoring and reportorial requirement of corporations is being implemented by the SEC through the submission of *complete, accurate* and *reliable* GIS. Hence, any **incomplete,**

[17] Application of an Existing Corporation to Increase its Foreign Equity Under the Foreign Investments Act of 1991.

inaccurate and false entries made therein, especially if done deliberately and in bad faith, as in this case, likewise constitutes a violation of the Corporation Code.

Moreover, the Corporation Code expressly mandates that the officers to be elected shall perform the duties enjoined on them by law and the by-laws of the corporation.[18] In the present case, it is the Corporate Secretary who is required to make an attestation under oath and the one under obligation to declare, under the penalty of perjury, that all matters set forth in the General Information Sheet were made **in good faith** and **duly verified.** However, Atty. Peralta, as the corporate secretary, failed to inquire and verify Marilyn U. Golangco's Filipino citizenship and violated his attestation by allowing the same entries to remain uncorrected when WGCC submitted its GIS's for years 2007, 2008 and 2009.

Hence, pursuant to the SEC's authority to ensure compliance and impose sanctions for the violation of laws, rules, regulations and orders, and to impose fines and/or penalties for violation of any law being implemented by the Commission[19], and in accordance with Section 144 of the Corporation Code[20], an additional fine of ten thousand pesos (Php 10, 000.00), for each and every year of commission, is hereby jointly and severally imposed against WGCC and Atty. Peralta, as corporate secretary, for willfully and falsely indicating in the GIS's for years 2007, 2008 and 2009, that shareholders Marilyn U. Golangco and Eric U. Golangco are Filipinos but who are, in truth and in fact, both American Citizens.

WHEREFORE, in view of the foregoing, the Appeal is hereby **PARTIALLY GRANTED.**

The 11 October 2012 Order of the EPD citing William Golangco Construction Corporation for violating the Foreign Investment Act of 1991 is **AFFIRMED.** The matter is hereby referred to the CRMD for the determination of the corresponding penalty under Section 14 of the FIA, and the imposition thereof. The CRMD is further directed to submit a report of compliance within ten (10) days from receipt

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[18] Section 25, Corporation Code of the Philippines, Batas Pambansa Blg. 68.
[19] Section 6(f), SEC Reorganization Act, Presidential Decree No. 902-A.
[20] Sec. 144. Violations of the Code. - Violations of any of the provisions of this Code or its amendments not otherwise specifically penalized therein shall be punished by a fine of not less than one thousand (P1,000.00) pesos but not more than ten thousand (P10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Securities and Exchange Commission: Provided, That such dissolution shall not preclude the institution of appropriate action against the director, trustee or officer of the corporation responsible for said violation: Provided, further, That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code.

of this decision. However, the penalties imposed citing Section 54.1(c) of the Securities Regulation Code is hereby **SET ASIDE.** Instead, for willfully making false statements in William Golangco Construction Corporation's GIS's for the years 2007, 2008 and 2009, a fine of ten thousand pesos (Php 10,000.00), for each and every year of violation, is hereby jointly and severally imposed against William Golangco Construction Corporation and Atty. Anthony B. Peralta, for violating the Corporation Code.

SO ORDERED.

Mandaluyong City, 19 September 2013.

TERESITA J. HERBOSA
Chairperson

MA. JUANITA E. CUETO
Commissioner

ELADIO M. JALA
Commissioner

MANUEL HUBERTO B. GAITE *
Commissioner

ANTONIETA F. IBE **
Commissioner

** On Official Business
* On Leave

SEC-OGC