Republic of the Philippines
Department of Finance
Securities and Exchange Commission
OFFICE OF THE GENERAL COUNSEL

IN THE MATTER OF URBAN DECA HOMES TISA CONDOMINIUM CORPORATION,

SEC Case No. 10-21-532
Promulgated: 26 July 2022

EDGAR EGO OGAN, J.D.,
Petitioner,
x - x

O R D E R

On record is a *Petition for Calling of Meeting/Election of Officers* (the "*Petition*") filed with the SEC – Cebu Extension Office (SEC-CEO) on 29 September 2021 requesting for assistance in the calling of a meeting and election of the officers of Urban Deca Homes Tisa Condominium Corporation (Urban Deca Homes), for the alleged non-calling of its annual meeting and election of officers/board of trustees.

On 13 October 2021, the SEC-CEO formally endorsed the Petition to the Office of the General Counsel (the "Office"), as the latter is vested with jurisdiction over cases requesting for the calling of stockholders' or members' meeting.[1]

Part I, Rule III, Section 3-2 of the 2016 Rules of Procedure of the Securities and Exchange Commission (the "Rules") specifically requires that a pleading filed with the Commission should comply with the formalities, otherwise, the same shall not be given due course, to wit:

> "All pleadings filed shall be written, printed or typed on bond paper in English or Filipino.
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> Each pleading shall contain a caption stating the Operating Department that has authority over the action, or Commission En Banc (in case of appeals), the title of the case, the case number, and the violation or offense involved, if any.

[1] Part I, Rule II, Section 2-2(g) of the 2016 Rules of Procedure of the Securities and Exchange Commission

> **No pleading shall be accepted by the Commission unless it conforms to the formal requirements** provided for in these Rules." (Emphasis supplied)

Moreover, considering that the instant Petition partakes of the nature of an adjudicative action, Sections 3-3 and 3-4 of Rule III, Part III of the Rules require that the same is verified and that a Certification on Non-Form Shopping be attached thereto under pain of dismissal for non-compliance, to wit:

> "**SEC. 3-3. Verification. – The petition** and answer **shall be verified** in the same manner as the Verified Answer under Section 3-3, Rule III, Part II of these Rules."
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> "**SEC. 3-4. Non-Forum Shopping**. The petitioner shall certify under oath that: (i) he has not commenced any action or filed any petition involving the same subject matter or issues in any court, tribunal or agency and, to the best of his knowledge, no such other action is pending therein; (ii) if there is such other pending action, a complete statement of its present status; and (iii) if he should thereafter learn that the same or similar action has been filed or is pending, he shall report that fact within five (5) days from such knowledge to the Operating Department concerned.
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> Failure to comply with any of the foregoing requirements shall result in the dismissal without prejudice of the petition. The submission of a false certification or non-compliance with any of the undertakings enumerated in the immediately preceding paragraph shall constitute indirect contempt of the Commission and may give rise to the imposition of administrative and criminal sanctions. If the acts of the party or his counsel constitute willful forum shopping, the same shall be considered a justifiable ground for the summary dismissal with prejudice of the action and constitute direct contempt of the Commission with the attendant administrative and criminal consequences." (Emphasis supplied)

Relative thereto, the records show that the Petition did not comply with the prescribed form, it was not verified by Petitioner who also failed to execute and submit a Certification on Non-Forum Shopping. While it is settled in jurisprudence that a failure of a party to verify the petition is merely formal and not jurisdictional[2], hence curable, non-compliance with the requirement on Certification on Non-Forum Shopping is not

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[2] "On the other hand, the requirement on verification of a pleading is a formal and not a jurisdictional requisite. It is intended simply to secure an assurance that what are alleged in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The party need not sign the verification. A party's representative, lawyer or any person who personally knows the truth of the facts alleged in the pleading may sign the verification." (*Vallacar Transit, Inc. vs Catubig*, G.R. No. 175512, May 30, 2011)

curable.[3] The nature as well as the number of formal defects attendant in the instant Petition prevents this Office from giving due course to the same, and thus warrants the dismissal thereof, without prejudice.

As regards the substantive aspect of the *Petition,* it can be readily discerned that the same is wanting in evidence that will tend to support the allegations that Urban Deca Homes has not held a meeting and election in violation of Section 49 of the Revised Corporation Code. This, again, warrants the outright dismissal of the Petition pursuant to Sections 3-5(b) of Rule III, Part III of the Rules, which provides, thus:

> "SECTION 3-5. *Outright Dismissal of a Petition.* — After an initial examination of the allegations in the petition and such evidence that may be attached to it, the Director of the Operating Department may **dismiss outright** the petition based on any of the following grounds:
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> a. The Commission or the Operating Department has no jurisdiction over the subject matter of the adjudicative action; or
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> b. The Operating Department finds insufficient evidence as would reasonably tend to establish *prima facie* the truth of the factual allegations contained therein, on the basis of the documents, affidavits and other evidence attached to the petition." (Emphasis supplied)

Finally, it should be emphasized, for the guidance of Petitioner, that a Petition filed pursuant to Section 49 of the RCC must comply with the following requirements:

a. It must be signed and verified by one of the stockholders/members of the relevant corporation;

b. It must state the principal place of business or postal address where the corporation and its board of directors/trustees may be served with summons and/or other processes;

c. It must implead and state the names of the board of directors/trustees of the relevant corporation; and

d. The allegations of violation of Section 49 of the RCC must be supported by substantial evidence showing *prima facie* the truth thereof.

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[3] "As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons." (*Fernandez vs Villegas*, G.R. No. 200191, August 20, 2014)

WHEREFORE, premises considered, the *Petition for Calling of Meeting/Election of Officers* is hereby **DISMISSED, WITHOUT PREJUDICE**, for its failure to comply with the Rules and for want of evidence that would establish *prima facie* the allegations provided therein.

SO ORDERED.

Makati City, Philippines; 26 July 2022.

ROMUALD C. PADILLA
General Counsel