REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ENCORE RECEIVABLE MANAGEMENT, INC., Petitioner,	**CTA CASE NO. 10449**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 18 2022 8:15 a.m.

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RESOLUTION

For the Court's resolution are the following:

1. petitioner's **Motion for Suspension of Collection of Taxes**, incorporated in its Petition for Review, filed by registered mail on December 18, 2020 and received by this Court on January 12, 2021;

2. respondent's **Answer (with Special and Affirmative Defenses) and Opposition to Motion for Suspension of Collection of Taxes**, filed by registered mail on March 22, 2021 and received by this Court on May 17, 2021, with petitioner's **Comment to Respondent's Answer**, filed on July 15, 2021; and

3. petitioner's **Formal Offer of Evidence (filed by Petitioner Encore Receivable Management Inc. relative to the Motion for Suspension of Collection of Taxes)**, filed on March 15, 2021, with respondent's **Comments/Objections (to**

Respondent's Formal Offer of Evidence), filed through registered mail on March 22, 2021 and received by this Court on May 20, 2021.

To recall, the Court received on January 12, 2021 a Petition for Review with Motion for Suspension of Collection of Taxes, which petitioner filed by registered mail on December 18, 2020.

In the Resolution dated February 10, 2021, the Court set for hearing the Motion for Suspension of Collection of Taxes.

Thereafter, in the Order dated March 1, 2021, the Court granted petitioner a period of five (5) days from March 8, 2021 within which to file a Formal Offer of Evidence (FOE) and Memorandum to support its Motion for Suspension of Collection of Taxes. The Court also granted respondent the same period within which to file Comment to the FOE and Memorandum in connection with the instant motion. The said order further stated that, upon receipt of the comment and memorandum, or expiry of the period for filing thereof, the FOE and Motion for Suspension of Collection of Taxes shall be submitted for resolution.

On March 15, 2021, petitioner filed its FOE.

However, on May 17, 2021 and May 20, 2021, the Court received respondent's Answer (with Special and Affirmative Defenses) and Opposition to Motion for Suspension of Collection of Taxes and respondent's Memorandum (To the Petitioner's Motion to Suspend Collection of Taxes), respectively. In both pleadings, respondent claims that the instant petition should be dismissed for lack of cause of action and lack of jurisdiction.

According to respondent, the petition should be dismissed for lack of cause of action and lack of jurisdiction for lack of authority of the person to file the same. Respondent maintains that petitioner Encore Receivable Management, Inc., a corporation, is the real party-in-interest. Being a corporation, it exercises its powers, including the power to sue, through its board of directors and/or duly authorized officers and agents. Relative thereto, jurisprudence provides that an individual corporate officer cannot solely exercise any corporate power pertaining to the corporation without authority from the board of directors.

Respondent avers that the instant Petition for Review with Motion for Suspension of Collection was instituted by Mr. Roldan Ngo, in the name of petitioner upon the strength of the Secretary's Certificate dated December 3, 2020, allegedly executed by the Corporate Secretary of petitioner's Head Office in California, USA.

Respondent claims that the Secretary's Certificate dated December 3, 2020 was neither authenticated nor apostilled, thus, such Certificate cannot be used by Mr. Roland Ngo to represent petitioner in the instant case as it cannot be duly proved. Respondent posits that the said Secretary's Certificate is deemed as not having been executed for purposes of instituting the action on behalf of petitioner and Mr. Roland Ngo is therefore deemed to have instituted it on his own and not in behalf of petitioner. Respondent states that Mr. Roland Ngo is not a real party-in-interest, and hence, the Petition for Review must be dismissed for lack of cause of action.

Respondent further avers that the Verification and Certification against forum shopping of the instant Petition for Review are defective. According to respondent, petitioner's failure to secure and attach to the instant petition the duly authenticated/apostilled Secretary's Certificate, where the authority to institute the action and to sign the Verification and Certification against forum shopping, are given/embodied, is a fatal defect and hence, sufficient ground for the dismissal of the instant action.

Lastly, respondent submits that this Court lacks jurisdiction over the instant Petition for Review. Respondent alleges that the instant petition does not involve any disputed assessment considering that the deficiency tax assessments contained in the Formal Letter of Demand (FLD) and Final Assessment Notice (FAN), all dated December 23, 2019, have become final, executory, and demandable in view of petitioner's failure to file either a request for reconsideration or request for reinvestigation within thirty (30) days from the valid service of the FLD/FAN upon petitioner's registered address at 5/F Glorietta 5, IT Bldg., East Drive, Ayala Center, Makati City, on December 26, 2019.

On May 20, 2021, the Court also received respondent's Comments/Objections (to Respondent's Formal Offer of Evidence), which was filed through registered mail on March 22, 2021.

In the Resolution dated June 16, 2021, the Court noted petitioner's Memorandum, respondent's Answer (with Special and Affirmative Defenses) and Opposition to Motion for Suspension of Collection of Taxes, and respondent's Memorandum (to the Petitioner's Motion to Suspend Collection of Taxes). In the same Resolution, respondent's request for dismissal of the case incorporated in his Answer (with Special and Affirmative Defenses) and Opposition to Motion for Suspension of Collection of Taxes was set for hearing on July 19, 2021; and the resolution of petitioner's FOE, Motion for Suspension of Collection of Taxes, and respondent's request for dismissal of the case incorporated in his Answer (with Special and Affirmative Defenses) and Opposition to Motion for Suspension of Collection of Taxes was held in abeyance.

On July 15, 2021, petitioner filed its Motion with Leave of Court (To Admit Attached Comment to Respondent's Answer and Attached Apostilled Copy of the Secretary's Certificate dated 3 December 2020).

In the Order dated July 19, 2021, the Court noted the manifestation of petitioner's counsels that petitioner is willing to post a bond in support of the latter's Motion for Suspension of Collection of Tax. Considering the manifestation of the counsels for respondent that respondent has no witness to present support respondent's request for dismissal of the case and also no witness to present in support of his opposition to petitioner's Motion for Suspension of Collection of Taxes, the parties were given twenty (20) days from July 19, 2021 or until August 8, 2021 to file their supplemental memoranda.

On October 8, 2021, the Court received respondent's Opposition (To Petitioner's Motion with Leave of Court to Admit Attached Comment to Respondent's Answer and Attached Apostilled Copy of the Secretary's Certificate dated 3 December 2020).

Subsequently, the Court granted on November 18, 2021 petitioner's Motion with Leave of Court (To Admit Attached Comment to Respondent's Answer and Attached Apostilled Copy of the Secretary's Certificate dated 3 December 2020) and admitted the attached Comment. As to the other matters raised by the parties, the Court held that the same can be better threshed out when respondent's request for dismissal is already submitted for resolution.

On November 2, 2021, petitioner filed its Manifestation (Petitioner's Filing of Supplemental Memorandum). Thereafter, the Court received on November 5, 2021 petitioner's Supplemental Memorandum, which was filed through registered mail on October 27, 2021.

Thus, considering the filing of petitioner's Supplemental Memorandum, without respondent's supplemental memorandum, per Records Verification dated October 6, 2021, the Court, in the Resolution dated December 14, 2021, deemed petitioner's Motion for Suspension of Collection of Taxes, incorporated in the Petition for Review, as well as respondent's request for dismissal of the case incorporated in his Answer (with Special and Affirmative Defenses) and Opposition to Motion for Suspension of Collection of Taxes, submitted for resolution. In the same Resolution, the Court noted petitioner's Manifestation (Petitioner's Filing of Supplemental Memorandum).

Hence, this resolution.

The Court shall first determine whether it has jurisdiction to entertain the present petition since the same is a primordial issue that must be passed upon by a court before any other issue is adjudicated.[1]

Sections 4 and 5, Rule 7 of the Revised Rules of Court, as amended, states:

> "Section 4. *Verification.* – Except when otherwise specifically required by law or rule, pleadings need not be under oath or verified.

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[1] *Bernadette S. Bilag, et al. vs. Estel a Ay-Ay, et al.,* G.R. No. 189950, April 24, 2017.

A pleading is verified by an affidavit of an affiant duly authorized to sign said verification. **The authorization of the affiant to act on behalf of a party, whether in the form of a secretary's certificate or a special power of attorney, should be attached to the pleading**, and shall allege the following attestations:

(a) The allegations in the pleading are true and correct based on his or her personal knowledge, or based on authentic documents;

(b) The pleading is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(c) The factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.

The signature of the affiant shall further serve as a certification of the truthfulness of the allegations in the pleading.

A pleading required to be verified that 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**. (4a)

Section 5. *Certification against forum shopping.* – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he [or she] has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his [or her] knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he [or

> she] should thereafter learn that the same or similar action or claim has been filed or is pending, he [or she] shall report that fact within five (5) calendar days therefrom to the court wherein his [or her] aforesaid complaint or initiatory pleading has been filed.
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> **The authorization of the affiant to act on behalf of a party, whether in the form of a secretary's certificate or a special power of attorney, should be attached to the pleading.**
>
> **Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing**. The submission of a false certification or noncompliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his [or her] counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. (5a)" (*Emphases supplied*)

As may be gleaned from the foregoing, a pleading is verified by an affidavit of an affiant duly authorized to sign said verification. The authorization of the affiant to act on behalf of a party, whether in the form of a secretary's certificate or a special power of attorney, should be attached to the pleading. Further, a pleading required to be verified that lacks a proper verification shall be treated as an unsigned pleading.

On the other hand, Section 24, Rule 132 of the 2019 Revised Rules on Evidence provides:

> "Section 24. *Proof of official record.* – The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by

> the officer having the legal custody of the record, or by his or her deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody.
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> If the office in which the record is kept is in a foreign country, which is a contracting party to a treaty or convention to which the Philippines is also a party, or considered a public document under such treaty or convention pursuant to paragraph (c) of Section 19 hereof, the certificate or its equivalent shall be in the form prescribed by such treaty or convention subject to reciprocity granted to public documents originating from the Philippines.
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> For documents originating from a foreign country which is not a contracting party to a treaty or convention referred to in the next preceding sentence, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his [or her] office. A document that is accompanied by a certificate or its equivalent may be presented in evidence without further proof, the certificate or its equivalent being *prima facie* evidence of the due execution and genuineness of the document involved. The certificate shall not be required when a treaty or convention between a foreign country and the Philippines has abolished the requirement, or has exempted the document itself from this formality. (24a)"

In the instant case, the Secretary's Certificate dated December 3, 2020, attesting to the approval by petitioner's Board of Directors of the resolution authorizing petitioner's corporate officers Aldrin Dennis Dulig, Michael Dana Montero and/or Roland Ngo, to (1) institute the appropriate judicial action relative to the tax investigation conducted by the Bureau of Internal Revenue covering the taxable period January to December 2016, (2) execute all necessary documents relative to the institution of the appropriate judicial action, including the Verification and Certification of Non-forum shopping, and designate petitioner's counsel as petitioner's Attorneys-in-Fact, and (3) perform such acts as may be necessary to carry out these resolutions, were attached, among others, to the Petition for Review that was filed through registered mail on December 18, 2020.

Also, the Secretary's Certificate dated December 3, 2020, attesting to the approval by petitioner's Board of Directors of the resolution authorizing petitioner's corporate officers Aldrin Dennis Dulig, Michael Dana Montero and/or Roland Ngo, to execute any and all documents, including the Verification and Certification of Non-Forum, and petitioner's counsel to represent petitioner in the instant case, was likewise attached to the Petition for Review.

It appears from both Secretary's Certificates that they have been executed on December 4, 2020 in Fremont, California by Mr. Steven L. Richie, Corporate Secretary of petitioner's Head Office, and acknowledged before Ms. Elena Genice Moreno, a Notary Public of the State of California, as shown in Annex "A-1" of petitioner's Comment to Respondent's Answer.

Accordingly, the said Secretary's Certificates must be apostilled pursuant to Section 24, Rule 132 of the 2019 Revised Rules on Evidence considering the same were executed in the U.S.A., a signatory to the *Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents*, otherwise known as the Hague Apostille Convention (or simply, the Apostille Convention) like the Philippines.

In *Heirs of Medina vs. Natividad*[2], the Supreme Court ruled:

> "The question to be answered is: Is the Special Power of Attorney supposedly authorizing Philip Natividad to file the instant case in behalf of his father admissible in evidence?
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> In *Lopez v. Court of Appeals*, we have ruled that a special power of attorney executed in a foreign country is, generally, not admissible in evidence as a public document in our courts. In said case, we said:
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>> Is the special power of attorney relied upon by Mrs. Ty a public document? We find that it is. It

[2] G.R. No. 177505, November 27, 2008.

has been notarized by a notary public or by a competent public official with all the solemnities required by law of a public document. When executed and acknowledged in the Philippines, such a public document or a certified true copy thereof is admissible in evidence. Its due execution and authentication need not be proven unlike a private writing.

Section 25, Rule 132 of the Rules of Court provides -

Sec. 25. Proof of public or official record. - An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

From the foregoing provision, **when the special power of attorney is executed and acknowledged before a notary public or other competent official in a foreign country, it cannot be admitted in evidence unless it is certified as such in accordance with the foregoing provision of the rules by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept of said public document and authenticated by the seal of his office.** A

> city judge-notary who notarized the document, as in this case, cannot issue such certification.
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> Considering that the record of the case does not disclose any compliance with the provisions of Section 25, Rule 132 of the Rules of Court on the part of the petitioner, the special power of attorney in question is not admissible in evidence. As such, Mrs. Priscilla L. Ty cannot lawfully prosecute the case against the private respondents in the name of her principal as her authority through a special power of attorney had not been duly established in evidence. The litigation was not commenced by the real party-in-interest or by one duly authorized by the said party.
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> This being so, the Metropolitan Trial Court, the Regional Trial Court and the Court of Appeals never acquired jurisdiction over the person of the real party-in-interest - Angelita Lopez. For lack of the requisite jurisdiction, all the proceedings in the said courts are null and void ab initio. All proceedings therein should be and are hereby set aside.
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> Accordingly, it is Our considered opinion, and We so hold, that a special power of attorney executed before a city judge-public notary in a foreign country, without the certification or authentication required under Section 25, Rule 132 of the Rules of Court, is not admissible in evidence in Philippine courts. (Emphasis supplied.)

In the case under consideration, the supposed special power of attorney involved was executed and acknowledged before Phyllis Perry, a Notary Public of the State of Washington, USA. This being the case, a certification or authentication, as required by Section 25 (now Section 24), Rules of Court, by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any other officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office, is required. A notary public in a foreign country is not one of those who can issue the required certificate.

The records are bereft of evidence showing that there was compliance with Section 25 (now Section 24). Non-compliance therewith will render the special power of attorney not admissible in evidence. Not being duly established in evidence, the special power of attorney cannot be used by Philip Natividad to represent his father, Bonifacio Natividad, in this legal action against the petitioners. It is thus clear that this case was not filed by the real party-in-interest (Bonifacio) or by one duly authorized by said party. Not being a real party-in-interest and sans the authority to pursue the case, Philip Natividad could not have validly commenced this case. The special power of attorney executed before a notary public in a foreign country without the requirements mentioned in Section 25 (now Section 24) of the Rules of Court cannot be admitted in evidence before Philippine courts.

Both lower courts and respondent's contention that the lack of consular authentication is a mere technicality that can be brushed aside in order to uphold substantial justice, is untenable. The failure to have the special power of attorney authenticated is not merely a technicality -- it is a question of jurisdiction. In *Lopez,* we pronounced that jurisdiction over the person of the real party-in-interest was never acquired by the courts. As a result, all proceedings in the lower courts were declared null and void *ab initio* and thus set aside.

In the case before us, the Regional Trial Court and the Court of Appeals did not acquire jurisdiction over the person of Bonifacio Natividad. Following our pronouncement in *Lopez,* all proceedings before these courts are voided and set aside. In light of this, we find no need to discuss the other issues raised. (*Emphasis and underscoring supplied*)

As already noted by the Court in the Resolution dated November 18, 2021, petitioner attached mere photocopies of the alleged apostilled Secretary's Certificates dated December 3, 2020 to its Comment to Respondent's Answer. Notably also, more than one year has already lapsed since the instant case was filed with the Court. To date, however, there is still no showing that petitioner already submitted the original apostilled Secretary's Certificates. Neither has petitioner offered any explanation for its failure to submit the same until now.

Considering that there is no showing of petitioner's compliance with the provisions of Section 24, Rule 132 of the 2019 Revised Rules on Evidence, the subject Secretary's Certificates are not admissible in evidence. As such, Mr. Roland Ngo cannot lawfully file the instant case against respondent in the name of petitioner as his authority through a Secretary's Certificate had not been duly established. The instant case was not commenced by the real party-in-interest or by one duly authorized by the said party. Accordingly, the Court never acquired jurisdiction over the person of petitioner, the real party-in-interest.

As held in *Ti vs. Diño*, procedural rules are laid down for the benefit of all and should not be made dependent upon a suitor's sweet time and own bidding:[3]

> "It must be emphasized that procedural rules are designed to facilitate the adjudication of cases. **Courts and litigants alike are enjoined to abide strictly by the rules. While in certain instances, the Court allows a relaxation in the application of the rules, it never intends to forge a weapon for erring litigants to violate the rules with impunity.** The liberal interpretation and application of rules apply only in proper cases of demonstrable merit and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that **every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice**. Party-litigants and their counsel are well advised to abide by, rather than flaunt, procedural rules, for these rules illumine the path

[3] G.R. No. 219260, November 6, 2017.

of the law and rationalize the pursuit of justice. It is this symbiosis between form and substance that guarantees that discernible result.

The use of the words 'substantial justice' is not a magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled or dismissed, simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only for the most persuasive of reasons, when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. Thus, as called upon by the respondents, the Court yields to the time-honored principle 'Justice is for all.' Litigants must have equal footing in a court of law; **the rules are laid down for the benefit of all and should not be made dependent upon a suitor's sweet time and own bidding.**" (*Emphasis supplied*)

In view of the foregoing, this Court is left with no recourse but to dismiss the instant Petition for lack of jurisdiction over the person of petitioner, the real party-in-interest,[4] and lack of a proper verification, making the same an unsigned pleading which produces no legal effect.[5] For lack of the requisite jurisdiction, all the proceedings in this Court are null and void *ab initio.* All proceedings herein should be and are hereby set aside.

WHEREFORE, premises considered, the **Petition for Review with Motion for Suspension of Collection of Taxes** is hereby **DISMISSED** for lack of jurisdiction.

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[4] *Heirs of Medina vs. Natividad,* G.R. No. 177505, November 27, 2008, citing *Lopez vs. Court of Appeals,* G.R. No. 77008, December 29, 1987.

[5] *Commissioner of Internal Revenue vs. Apo Cement Corporation,* G.R. No. 193381, February 8, 2017.

SO ORDERED.

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

LANEE S. CUI-DAVID
Associate Justice