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

PHILIPPINE INSTITUTE OF ARCHITECTS - DAVAO SECTION, INC.
Appellant,

- versus -

SEC *En Banc* Case No. 09-17-430

PHILIPPINE INSTITUTE OF ARCHITECTS
Appellee.

x - x

DECISION

Before the Commission is the *Memorandum on Appeal* dated 9 January 2017 (the "Appeal") filed by Appellant Philippine Institute of Architects – Davao Section, Inc. (Appellant PIA-Davao) praying that a Decision be issued reversing the Decision dated 5 December 2016 (the "Assailed Decision") of the Office of the General Counsel (OGC) for alleged lack of merit, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, Respondent, **PHILIPPINE INSTITUTE OF ARCHITECTS – DAVAO SECTION, INC**. with SEC Registration No. CN200828759, is hereby ordered to **DELETE "PHILIPPINE INSTITUTE OF ARCHITECTS"** from its corporate name by amending its Articles of Incorporation and filing the same with this Commission within thirty (30) days from date of receipt hereof. It is further directed to submit a compliance report within the same period, enclosing therein a certified copy of the approved Amended Articles of Incorporation. Respondent's failure to comply with this Order is a ground for revocation of its Certificate of Registration.
>
> With respect to Complainant's prayer for Attorney's Fees, the same is **DENIED FOR LACK OF JURISDCICTION**.
>
> Let a copy of this Order be furnished to the Company Registration and Monitoring Department so that Respondent's compliance with this Order is monitored.
>
> **SO ORDERED.**"

THE RELEVANT FACTS

The parties are both registered associations with the Commission; the PHILIPPINE INSTITUTE OF ARCHITECTS (Appellee PIA) was registered on 2 May 1967 under SEC Registration No. 32280, while Appellant PIA-Davao was registered on 20 June 2008 under SEC Registration No. CN200828759.

On 23 April 2010, Appellee PIA filed a Complaint dated 21 April 2010 praying for the issuance of an Order directing Appellant PIA-Davao to amend its Articles of Incorporation (AOI) by deleting "Philippine Institute of Architects" from its corporate name for being deceptively and confusingly similar to the corporate name of Appellee PIA which did not give its consent to such use.

In its Answer dated 22 June 2010, Appellant PIA-Davao maintained that the Complaint is dismissible on the ground that its corporate name is distinct from that of Appellee PIA such that no confusion will result from its continued use. Appellant PIA-Davao also argued that the matter subject of the parties' dispute is intra-corporate in nature that is not within the jurisdiction of the Commission.

Appellee PIA filed its Reply[1] which basically reiterated the arguments in the Complaint, and further argued that PIA-Davao's allegation that it was able to secure a consent to the use of "Philippine Institute of Architects" has no basis and was a mere afterthought.

Pursuant to the manifestations of the parties to explore the possibility of amicably settling the instant case, the OGC conducted a hearing on 28 August 2012 where the parties expressed willingness draft and execute a compromise agreement.

However, on 4 October 2012, Appellee PIA filed a Motion for Resolution[2] after the Appellant PIA-Davao allegedly repudiated its proposal for settlement and decided to proceed with the case.

The Assailed Decision of the OGC prompted the filing of the instant Appeal where Appellant PIA-Davao seeks the reversal thereof on the ground that the Commission has no jurisdiction over the instant case and that the Complaint which it sustained was allegedly devoid of merit.

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[1] Dated 15 July 2010

[2] Dated 27 September 2012

ISSUE

Whether the OGC committed reversible error in finding that Appellant PIA-Davao's corporate name is confusingly similar to that of Appellee PIA and in directing the amendment of the former's AOI with the deletion of "Philippine Institute of Architects".

RULING

The Appeal has no merit.

Before We discuss the substantive matter presented in the instant case, it is imperative that We preliminarily dispose of the issue of jurisdiction based on the doctrine that any decision, resolution or order rendered by a court or government agency without jurisdiction is void.[3]

In its Appeal, Appellant PIA-Davao maintained that the OGC committed reversible error in taking cognizance of the instant case, arguing that the dispute is between the corporation, partnership or association and its stockholders, partners, members or officers[4]. In support thereof, Appellant PIA-Davao alleged that it is a duly recognized section of Appellee PIA which makes them members of the latter, and renders the instant dispute intra-corporate in nature.[5]

We do not agree with Appellant PIA-Davao.

The matter subject of the instant case involves the valid use of corporate names which is regulated under Batas Pambansa Blg. 68 otherwise known as the Corporation Code, specifically Section 18 thereof[6], which is the law in effect when the instant case was filed.

Considering that issue presented involves and relates to the interpretation and application of the provisions of the Corporation Code,

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[3] "A void judgment is no judgment at all in legal contemplation. In *Canero v. University of the Philippines*, we held that-

x x x A void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It has no legal or binding effect or efficacy for any purpose or at any place. It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there was no judgment. x x x A judgment rendered without jurisdiction is a void judgment. This want of jurisdiction may pertain to lack of jurisdiction over the subject matter or over the person of one of the parties.

A void judgment may also arise from the tribunal's act constituting grave abuse of discretion amounting to lack or excess of jurisdiction." (*Imperial vs Hon. Armes*. G.R. No. 178842, January 30, 2017)

[4] Par. 13 of the Appeal (citing Go vs Properties Development and Construction, Inc., G.R. No. 184024

[5] Par. 14 of the Appeal

[6] Now Section 17 of R.A. No. 11232 (the "Revised Corporation Code")

the Commission thus holds that the instant case falls within its primary and exclusive jurisdiction which is expressly granted under Section 5.1(a) of Republic Act No. 8799 or the Securities Regulation Code, thus:

> "Section 5. *Powers and Functions of the Commission* – 5.1. **The Commission shall act with transparency and shall have the powers and functions provided by** this code, Presidential Decree No. 902-A, **the Corporation Code**, the Investment Houses law, the Financing Company Act and other existing laws. **Pursuant thereto the Commission shall have, among others, the following powers and functions**:
>
> (a) **Have jurisdiction and supervision over all corporations**, partnership or associations **who are the grantees of primary franchises** and/or a license or a permit issued by the Government;
>
> xxx xxx xxx
>
> (d) **Regulate, investigate or supervise the activities of persons <u>to ensure compliance</u>**;
>
> xxx xxx xxx
>
> (n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purpose of these laws." (Emphasis supplied)

In the case of *Provident International Resources Corp. v. Venus*[7], the Supreme Court explained the nature and extent of regulatory powers of this Commission, thus:

> "It can be said that the SEC's regulatory authority over private corporations encompasses a wide margin of areas, touching nearly all of a corporation's concerns. <u>This authority more vividly springs from the fact that a corporation owes its existence to the concession of its corporate franchise from the state. Under its regulatory responsibilities, the SEC may</u> pass upon applications for, or may suspend or revoke (after due notice and hearing), certificates of registration of corporations, partnerships and associations (excluding cooperatives, homeowners' association, and labor unions); <u>compel legal and regulatory compliances</u>; conduct inspections; <u>and impose fines or other penalties for violations</u> of the Revised Securities Act, as well as implementing rules and directives of the SEC, such as may be warranted." (Emphasis supplied)

The determination of whether, based on given set of facts, a corporation is in violation of Section 18 of the Corporation Code and should be directed to change its corporate name for being identical, deceptively or confusingly similar to a registered corporate name, is an administrative function the performance of which, is proper and exclusive to the Commission. In the case of *Palawan Council for*

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[7] G.R. No. 167041, June 17, 2008

Sustainable Development vs Ejercito Lim[8], the Supreme Court (the "Court") discussed the nature of administrative adjudicatory power, thus:

> "Administrative agencies possess two kinds of powers, the quasi-legislative or rule-making power, and the quasi-judicial or administrative adjudicatory power. The first is the power to make rules and regulations that results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of powers. [15] The issuance of the assailed A.O. No. 00-05, Resolution. No. 03-211 and the other issuances by the PCSD was in the exercise of the agency's quasi-legislative powers. <u>The second is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act that is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it</u>." (Emphasis ours)

Thus, to ensure that the policy behind the prohibition on the use of identical, deceptively or confusingly similar corporate names embodied in Section 18 of the Corporation Code is effectively implemented, the Supreme Court has consistently sustained the jurisdiction of the Commission over matters involving or relating to the interpretation and/or implementation of the Corporation Code notwithstanding the presence of an intra-corporate dispute, contrary to the position of Appellant PIA-Davao.

In the case of the *Roman, Jr. vs. Securities and Exchange Commission*[9], the Court categorically ruled that allegations of intra-corporate dispute does not deprive the Commission of its administrative and regulatory jurisdiction to determine if administrative violations have been committed, and the Commission retains the power to adjudicate on matters involving the implementation of the statutes it is mandated to administer notwithstanding the fact that an intra-corporate issue was raised in the complaint, to wit:

> "Under the SRC, jurisdiction on matters stated under Section 5 of P.D. No. 902-A, which was originally vested in the SEC, has already been transferred to the RTC acting as a special commercial court. <u>Despite the said transfer, however, the SEC still retains sufficient powers to justify its assumption of jurisdiction over matters concerning its supervisory, administrative and regulatory functions</u>. In *SEC v. Subic Bay Golf and Country Club, Inc. (SBGCCI) and Universal International Group Development Corporation (UIGDC)*, for instance, the Court affirmed the SEC's assumption of jurisdiction over a complaint, which alleged that SBGCCI and UIGDC committed misrepresentations in the sale of their shares. The Court held in the said case that nothing prevented the SEC from assuming jurisdiction to determine if SBGCCI and UIGDC committed administrative violations and were liable under the SRC despite the complaint having raised intra-corporate issues. It also ruled that the SEC may investigate

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[8] G.R. No. 183173, August 24, 2016
[9] G.R. No. 196329, June 1, 2016.

activities of corporations to ensure compliance with the law.

In ruling that way, the Court cited Sections 5 and 53 of the SRC as justifications, to wit:

> SECTION 5. *Powers and Functions of the Commission.* — 5.1. The Commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses Law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:
>
> (a) Have jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or permit issued by the Government;
>
> x x x
>
> (d) Regulate, investigate or supervise the activities of persons to ensure compliance;
>
> x x x
>
> (n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.
>
> x x x
>
> SECTION 53. *Investigations, Injunctions and Prosecution of Offenses.* — 53.1. The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Code, any rule, regulation or order thereunder, or any rule of an Exchange, registered securities association, clearing agency, other self-regulatory organization, and may require or permit any person to file with it a statement in writing, under oath or otherwise, as the Commission shall determine, as to all facts and circumstances concerning the matter to be investigated. x x x

Beyond doubt, therefore, is the authority of the SEC to hear cases regardless of whether an action involves issues cognizable by the RTC, provided that the SEC could only act upon those which are merely administrative and regulatory in character. In other words, the SEC was never dispossessed of the power to assume jurisdiction over complaints, even if these are riddled with intra-corporate allegations, if their invocation of authority is confined only to the extent of ensuring compliance with the law and the rules, as well as to impose fines and penalties for violation thereof; and to investigate even *motu proprio* whether corporations comply with the Corporation Code, the SRC and the implementing rules and regulations." (Emphasis supplied)

On the basis of the foregoing, the Commission holds that the OGC did not commit reversible error in taking cognizance of the instant case as the same was made pursuant to and in compliance with its mandate and duty to effectively administer and implement the provisions of the Corporation Code.

Moreover, the records will show that the dispute relating to the use of "Philippine Institute of Architects" cannot be intra-corporate in nature because the entities claiming a right to a legal and valid use of the same are two (2) different corporations i.e., Appellee PIA with SEC Registration No. 32280, and Appellant PIA-Davao with SEC Registration No. CN200828759. Thus, applying the two-tier test i.e., the relationship test and the nature of the controversy test[10], it can easily be determined that there is no intra-corporate controversy, contrary to the position of Appellant PIA-Davao that it is a recognized entity of Appellee PIA, because the dispute involves two (2) different corporations that are equally asserting the right to use the name "Philippine Institute of Architects". The allegation of Appellant PIA-Davao that it is an entity recognized by Appellee PIA will not negate the fact that they are two (2) distinct and separate entities, and any dispute between them will not be considered intra-corporate.

Going now to the main issue, Appellant PIA-Davao argues that the OGC committed reversible error in directing the amendment of its AOI by removing "Philippine Institute of Architects", because it is distinct from that of Appellee PIA such that no confusion will result from its continued use.

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[10] "The existence of any of the above intra-corporate relations was sufficient to confer jurisdiction to the SEC now the RTC, regardless of the subject matter of the dispute. This came to be known as the relationship test.

However, in the 1984 case of DMRC Enterprises v. Esta del Sol Mountain Reserve, Inc., the Court introduced the nature of the controversy test. We declared in this case that it is not the mere existence of an intra-corporate relationship that gives rise to an intra-corporate controversy; to rely on the relationship test alone will divest the regular courts of their jurisdiction for the sole reason that the dispute involves a corporation, its directors, officers, or stockholders. We saw that there is no legal sense in disregarding or minimizing the value of the nature of the transactions which gives rise to the dispute.

Under the nature of the controversy test, the incidents of that relationship must also be considered for the purpose of ascertaining whether the controversy itself is intra-corporate. The controversy must not only be rooted in the existence of an intra-corporate relationship, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation. If the relationship and its incidents are merely incidental to the controversy or if there will still be conflict even if the relationship does not exist, then no intra-corporate controversy exists.

The Court then combined the two tests and declared that jurisdiction should be determined by considering not only the status or relationship of the parties, but also the nature of the question under controversy. This two-tier test was adopted in the recent case of Speed Distribution, Inc. v. Court of Appeals:

'To determine whether a case involves an intra-corporate controversy, and is to be heard and decided by the branches of the RTC specifically designated by the Court to try and decide such cases, two elements must concur: (a) the status or relationship of the parties, and [b] the nature of the question that is the subject of their controversy." (Aguirre vs FQB+7, Inc., G.R. No. 170770, January 9, 2013)

Section 18 of the Corporation Code[11] expressly provides:

> "Section 18. Corporate name. – No corporate name may be allowed by the Securities and Exchange Commission if the proposed name **is identical or deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law or is patently deceptive, confusing or contrary to existing laws**. When a change in the corporate name is approved, the Commission shall issue an amended certificate of incorporation under the amended name." (Emphasis supplied)

To fall within the prohibition of the law, two (2) requisites must be proven, to wit:

(1) That the complainant corporation acquired a prior right over the use of such corporate name; and
(2) The proposed name is either:
   a. identical, or
   b. deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law.[12]

There is an important distinction between a corporate name and an individual name in respect to the manner of their acquisition. A corporation acquires its name by choice and is thus accorded a wide latitude and discretion to create or adopt one that is unique (and not one that is already appropriated by a senior corporation), while an individual's name is thrust upon him.[13] It is in this context that the use of corporate names are regulated, and corporations are required to specifically undertake to modify their names if the same are found to be confusing, deceptive or violative of existing laws. Hence, in *Ang mga Kaanib sa Iglesia ng Dios kay Kristo Hesus v. Iglesia ng Dios kay Cristo Jesus*[14], the Supreme Court held that entities found to be using corporate names that are either identical, deceptively or confusingly similar to one used by an existing corporation assume the risk of being directed to change the same for being violative of Section 18 of the Corporation Code, thus:

> **"Parties organizing a corporation must choose a name at their peril; and the use of a name similar to one adopted by another corporation, whether a business or a nonprofit organization, if misleading or likely to injure in the exercise of its corporate functions, regardless of intent, may be prevented by the**

[11] Section 17 of the Revised Corporation Code
[12] Industrial Refractories Corporation of the Philippines vs. Court of Appeals, et al., GR No. 122174, October 3, 2002 citing Philips Export B.V. vs. Court of Appeals 206 SCRA 457, 463 [1992].14
[13] Standard Oil Co. of N.M. vs Standard Oil Co. of Cal., 13 U.S.P.Q. 76
[14] G.R. No. 137592, December 12, 2001

corporation having a prior right, by a suit for injunction against the new corporation to prevent the use of the name.

At any rate, **the SEC has the authority to de-register at all times and under all circumstances corporate names which in its estimation are likely to spawn confusion. It is the duty of the SEC to prevent confusion in the use of corporate names not only for the protection of the corporations involved but more so for the protection of the public.**" (Emphasis supplied)

In *De La Salle Montessori International of Malolos, Inc. v. De La Salle Brothers, Inc.* [15], the Court laid down the policy behind Section 18 of the Code, thus:

"The policy underlying the prohibition in Section 18 against the registration of a corporate name which is "identical or deceptively or confusingly similar" to that of any existing corporation or which is "patently deceptive" or "patently confusing" or "contrary to existing laws," is the avoidance of fraud upon the public which would have occasion to deal with the entity concerned, the evasion of legal obligations and duties, and the reduction of difficulties of administration and supervision over corporations." (Emphasis supplied)

After a careful review of the evidence on record, the Commission finds that the two (2) requisites prescribed by the Supreme Court are present which renders the use by Appellant PIA of "Philippine Institute of Architects" as part of its corporate name, violative of Section 18 of the Corporation Code.

(A) Appellee PIA acquired Prior right over "Philippine Institute of Architects"

In *Philips Export B.V. et al. v. Court of Appeals et al.,*[16] the Supreme Court ruled that the right to the exclusive use of a corporate name with freedom from infringement by similarity is determined by priority of adoption. The priority of adoption rule which is used to determine who among two or more entities are entitled to the use of a corporate name takes into consideration the registration date when the parties started using their corporate names.[17]

In the instant case, the records show that Appellee PIA was registered on 2 May 1967, or forty-one (41) years earlier than Appellant PIA-Davao which was registered only on 20 June 2008. Given this

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[15] G.R. No. 205548, February 7, 2018
[16] G.R. No. 96161, 21 February 1992
[17] See Indian Chamber of Commerce Phils., Inc. v. Filipino Indian Chamber of Commerce in the Philippines, Inc., G.R. No. 184008, [August 3, 2016]

undisputed fact, we hold that Appellee PIA has acquired the prior right to the use of "Philippine Institute of Architects" as its corporate name under the principle of *prius tempore potior jure* or first in time, stronger in right.

(B) Appellant PIA-Davao's corporate name is confusingly similar to Appellee's "Philippine Institute of Architects"

In determining if the second requirement is present i.e., existence of confusing similarity in corporate names, jurisprudence states that the test is whether the similarity is such as to mislead a person using ordinary care and discrimination. It is also settled that proof of actual confusion between the two corporate names is not necessary, it being sufficient that confusion is probable or likely to occur.[18]

In the instant case, we find that "Philippine Institute of Architects" dominates the corporate names of both Appellee PIA and Appellant PIA-DAVAO. Considering that both Appellee PIA and Appellant PIA-DAVAO are engaged in the same undertaking as evidenced by the fact that they practically have the same purpose clause and are composed of licensed architects, the Commission finds that Appellant PIA-DAVAO's corporate name is confusingly similar to Appellee PIA, and the use by the former of "Philippine Institute of Architects" as part of its corporate name will likely confuse and mislead the public into thinking that they are related or are operated by the same corporation. In *Coffee Partners, Inc. v. San Francisco Coffee & Roastery, Inc.*[19], it was held that:

> "The likelihood of confusion is higher in cases where the business of one corporation is the same or substantially the same as that of another corporation.
>
> Respondent has acquired an exclusive right to the use of the trade name "SAN FRANCISCO COFFEE & ROASTERY, INC." since the registration of the business name with the DTI in 1995. Thus, respondent's use of its trade name from then on must be free from any infringement by similarity."

Finally, it bears emphasis that Par. 3(b) of SEC Memorandum Circular No. 21, series of 2013 requires that if a name applied for is similar to that of a registered corporation, the applicant shall add one or more distinctive words to the proposed name to remove the similarity or differentiate it from the registered name. However, the addition of one or more distinctive words shall not be allowed if the registered name is

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[18] Philips Export B.V. et al. v. Court of Appeals et al., G.R. No. 96161, 21 February 1992
[19] G.R. No. 169504, March 3, 2010

coined or unique unless the board of directors or the subject corporation gives its consent to the applied name.

In the instant case, there is no showing that Appellee PIA has permitted or consented to the use of "Philippine Institute of Architects" as part of Appellant PIA-DAVAO's corporate name. Accordingly, the Commission finds no cogent reason to disturb the Assailed Decision finding that Appellant PIA-DAVAO's corporate name is confusingly similar to that of Appellee PIA.

WHEREFORE, premises considered, the Appeal is hereby **DISMISSED** for lack of merit. The Decision dated 5 December 2016 of the Office of the General Counsel is hereby **AFFIRMED**. The Philippine Institute of Architects – Davao Section, Inc. is hereby DIRECTED to amend its Articles of Incorporation by changing its corporate name and/or adopting a corporate name that does not include the "Philippine Institute of Architects".

SO ORDERED.

Pasay City, Philippines; 25 November 2021.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner