REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

DIAGEO PHILIPPINES, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8434

Present:
BAUTISTA, *Chairperson*
PALANCA-ENRIQUEZ, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
JUN 22 2012
ABFernand 2:13 p.m.

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RESOLUTION

On April 23, 2012, the Court promulgated a Resolution giving petitioner a final and non-extendible period of ten (10) days, or until April 28, 2012, to comply with the Resolution dated March 27, 2012, ordering petitioner to submit an original or certified true copy of the Secretary's Certificate or Board Resolution authorizing Britanico Sarmiento & Ringler Law offices to act as counsel for petitioner, and Emer M. Aceron to sign the Certification and Verification of Non-Forum Shopping.

On April 27, 2012, petitioner filed a "Compliance" submitting a Secretary's Certificate in compliance with the Court's order.

For reference, Section 2 of Rule 6 of the 2005 Revised Rules of the Court of Tax Appeals reads as follows:

> SEC. 2. *Petition for review; contents.* – The petition for review shall contain allegations showing the jurisdiction of the Court, a

> concise statement of the complete facts and a summary statement of the issues involved in the case, as well as the reasons relied upon for the review of the challenged decision. The petition shall be verified and must contain a certification against forum shopping as provided by Section 3, Rule 46 of the Rules of Court. A clearly legible duplicated original or certified true copy of the decision appeals from shall be attached to the petition. (Underlining Ours.)

Furthermore, Sections 4 and 5 of Rule 7 of the Rules of Civil Procedure state:

> "SEC. 4. *Verification.*—Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.
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> 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 personal knowledge or based on authentic records.
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> 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.
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> SEC. 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 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 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 should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
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> 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 non-compliance 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 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." (Underlining Ours)

The above cited rules make it clear that a pleading required to be verified will be treated as an unsigned pleading if it lacks proper verification. Failure of the petitioner to comply with any of the requirements in filing a petition for review is sufficient ground for the dismissal of the same.

When the petitioner is a corporation, inasmuch as corporate powers are exercised by the board, the certification shall be executed by a natural person authorized by the corporation's board of directors. Absent any authority from the board, no person, not even the corporate officers, can bind the corporation. Only individuals who are vested with authority by a valid board resolution may sign the certificate of non-forum shopping in behalf of the corporation, and proof of such authority must be attached to the petition. Failure to attach to the certification any proof of the signatory's authority is a sufficient ground for the dismissal of the petition.[1]

Upon review of the records, the Court found that the Petition for Review was filed by Diageo Philippines, Inc., on February 27, 2012, and the Verification and Certification of Non-Forum Shopping attached to the same was signed by Mr.

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[1] *Purefoods Corporation vs. Nagkakaisang Samahang Manggagawa ng Purefoods Rank-and-File, St. Thomas Free Workers Union, Purefoods Grandparent Farms Workers Union and Purefoods Unified Labor Organization*, G.R. No. 150896, August 28, 2008, 563 SCRA 471, citing *Fuentebella v. Castro*, G.R. No. 150865, June 30, 2006, 494 SCRA 183; *Philippine Airlines, Inc. v. Flight Attendants and Stewards Association of the Philippines*, G.R. No. 143088, January 24, 2006, 479 SCRA 605; *Expertravel & Tours, Inc. v. Court of Appeals*, G.R. No. 152392, May 26, 2005, 459 SCRA 147, *San Pablo Manufacturing Corporation v. Commissioner of Internal Revenue*, G.R. No. 147749, June 22, 2006, 492 SCRA 192.

Emer M. Aceron on the same day. On the other hand, the Secretary's Certificate submitted to the Court dated April 27, 2012 and signed by Corporate Secretary Maria Christina Macasaet-Acaban, states as follows:

> 2. At a special meeting of the Board of Directors of the Corporation held on 26 April 2012, during which a quorum was present throughout, the following resolutions were adopted:
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> > RESOLVED, that Mr. Emer Aceron, Tax Manager of the Corporation or Mr. Christopher Tissainayagam, Finance Director of the Corporation, acting singly, are hereby authorized to represent the Corporation in all court proceedings and to initiate and/or cause to be prepared and filed for and on behalf of the Corporation all pleadings, motion and other papers with respect to the Petition for Review with the Court of Tax Appeals for the Third Quarter of 2009 input VAT Refund entitled, *Diageo Philippine, Inc., vs. The Commissioner of Internal Revenue*. (Underlining Ours.)

Given the above, Mr. Emer M. Aceron was only given the authority to sign the Certification and Verification of Non-Forum Shopping during the special meeting of the Board of Directors of the Corporation held on April 26, 2012. Mr. Aceron did not have the authority to sign the Certification and Verification of Non-Forum Shopping on February 27, 2012, thus the same cannot be considered a valid verification and certification.

The authorization of Mr. Emer M. Aceron on April 26, 2012 and the submission of the Secretary's Certificate to the Court on April 27, 2012 cannot be considered corrective or substantial compliance of the rules regarding Certification and Verification.

Similarly, the authorization given to Britanico Sarmiento and Ringler is lacking. The pertinent portion of the Secretary's Certificate states:

> RESOLVED, that Britanico Sarmiento and Ringler Law offices, Attys. Rodolf C. Britanico, Kennedy B. Sarmiento, Diane Angeli S. Andres, Maria Samantha V. David, Gayle Hazel S. Isip-Reyes, Julius Cesar T. Lerit, Marianne R. Palisoc, Carol G. Valenzuela, Paula Sophia G. Estrella, Kathleen Phyllis P. Guerrero, Abbiegail D. Sac, and Elaine Christine K. Ocampo-Tan with office address at 7th Floor, BDO plaza, 8737 PAseo De Roxas, Makati City, be authorized to act as the true and lawful attorneys-in-fact of the Corporation to appear for and represent the Corporation in CTA Case entitled *Diageo Philippines, Inc. vs. The Commissioner of Internal Revenue*, pending before the Court of Tax Appeals, to do and perform the following acts:
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> 1. to enter into plea bargaining;
> 2. to discuss and explore the possibility of an amicable settlement, negotiate, enter into, conclude, execute, sign and deliver a compromise agreement as may be deemed just and equitable;
> 3. to submit the case to alternative mode of dispute resolution
> 4. to agree on a simplification of the issues;
> 5. to amend and/or agree to the amendment of pleadings;
> 6. to enter into and/or agree to the amendment or admissions of facts and documents to avoid unnecessary proof;
> 7. to limit the number of witnesses;
> 8. to preliminarily refer issues to a commissioner;
> 9. to agree on the propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefore be found to exist;

10. to agree on the advisability or necessity of suspending the proceedings; and,
11. to agree on such matter and do such things as may aid in the prompt disposition of the action.

RESOLVED, that Britanico Sarmiento and Ringler Law Offices, Attys. Rodolf C. Britanico, Kennedy B. Sarmiento, Diane Angeli S. Andres, Maria Samantha V. David, Gayle Hazel S. Isip-Reyes, Julius Cesar T. Lerit, Marianne R. Palisoc, Carol G. Valenzuela, Paula Sophia G. Estrella, Kathleen Phyllis P. Guerrero, Abbiegail D. Sac, and Elaine Christine K. Ocampo-Tan be, as they are hereby authorized to sign a Compromise Agreement or a Pre-Trial order that may be issued by the Honorable Court in this case." (Underlining Ours.)

Every pleading must be signed by the party or counsel representing him.[2] It appears, given the above, that the authority to represent the company given to Britannico Sarmiento and Ringler Law Offices is limited to activities during Pre-Trial and does not cover the filing of the petition before the Court, or signing the same petition in the stead of Diageo. Thus, the Court also finds the petition deficient in this regard.

The Court stresses that while technical rules of procedure are designed not to frustrate the ends of justice, nonetheless, they are intended to effect the proper and orderly disposition of cases and effectively prevent the clogging of court dockets.[3] Strict compliance with procedural rules is required to facilitate the orderly administration of justice.[4] Substantial compliance will not suffice in a

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[2] Section 3, Rule 7 of the Rules of Civil Procedure.
[3] *Ismael V. Santos, Alfredo G. Arce and Hilario M. Pastrana vs. Court of Appeals, Pepsi Cola Products Phils., Inc., Luis Lorenzo, Jr. and Frederick Dael*, G.R. No. 141947, July 5, 2001, 360 SCRA 512.
[4] *PET Plans, Inc. vs. Court of Appeals*, G.R. No. 148287, November 23, 2004, 443 SCRA 510.

matter that demands strict observance of the Rules;[5] this includes the requirement on verification and non-forum shopping.[6]

WHEREFORE, in view of the foregoing the Petition for Review is **DISMISSED** for non-compliance with Rule 6 of the 2005 Revised Rules of the Court of Tax Appeals and Rule 7 of the 1997 Revised Rules of Civil Procedure, as amended.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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[5] *Kazuhiro Hasegawa and Nippon Engineering Consultants Co., ltd., vs. Minoru Kitamura*, G.R. No. 149177, November 23, 2007 citing Loquias v. Office of the Ombudsman, G.R. No. 139396, August 15, 2000.
[6] *San Pablo Manufacturing Corporation vs. Commissioner of Internal Revenue*, G.R. No. 147749, June 26, 2006, 492 SCRA 192.