Republic of the Philippines
Department of Finance
Securities and Exchange Commission
Pasay City, Philippines

Ma. Daphne B. Bigcas, Rebecca B. Bernales, Roberto B. Bernales, Christine Anne B Tiu,
Respondent-Appellants,

versus

Teresita B. Dipon,
Complainant-Appellee.

SEC En Banc Case No. 05-14-330
For: Appeal of CRMD's Order Cancelling the Certificate of Approval of Increase of Capital Stock of Notre Dame Oilfields Maritime Services, Inc.

DECISION

This resolves the Notice and Memorandum of Appeal[1] filed on 7 May 2014 by Ma. Daphne B. Bigcas, Rebecca B. Bernales, Roberto B. Bernales, and Christine Anne B Tiu, (Appellants) against the Order dated 6 March 2014 of the Company Registration and Monitoring Decision (CRMD) for grave abuse of discretion and for serious errors.[2]

Notre Dame Oilfields Maritime Services, Inc. (Notre Dame) was registered with the Commission on 14 January 1992.[3] Teresita B. Dipon (Appellee) is a director, stockholder and vice-president of Notre Dame holding 41.25% of its outstanding capital stock.[4] Appellants are also directors and officers of Notre Dame collectively owning 58.75% of the outstanding capital stock.[5]

On 27 August 2013, an emergency meeting was allegedly called by the stockholders of Notre Dame due to its tight financial position.[6] Appellants allegedly pledged to infuse additional capitalization of P3,500,000.00 as present bank balance was insufficient to cover the operation of the company for the next two months.[7]

On 5 September 2013, the infusion of additional capital that was allegedly raised in the 27 August meeting was raised and reiterated.[8]

On 18 October 2013, CRMD issued a Certificate of Approval of Increase of Capital Stock of Notre Dame.[9]

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1 Dated 7 May 2014.
2 Appeal Memo. at 1.
3 *Id.* Anx. 9 at 1.
4 *Id.* at 2
5 *Id.*
6 *Id.* Anx. 1.
7 *Id.*
8 *Id.* Anx. 2.
9 *Id.* Anx. 3.

Appellee filed a complaint on 19 December 2013 seeking the cancellation of Certificate of Approval of Increase of Capital Stock of Notre Dame alleging that fraud was attendant in its registration of the increase.[10]

On 6 March 2014, CRMD released an Order cancelling the Certificate of Increase of Capital Stock of Notre Dame because the approval to the increase in capital stock of Notre Dame was illegally procured and thus warrants its cancellation.[11]

Hence, this Appeal.

The Appellants raises the following issues as sifted from their Memorandum of Appeal:

1. Did the alleged 27 August meeting approving the increase of capital stock by 2/3 vote of the outstanding capital stock really exist?[12]
2. Was there an implied waiver of notice to the meeting by the Appellee?[13]

The appeal is without merit.

On the first issue, Appellants alleged that the sentence, stating that the 5 September Meeting was a follow-up of the meeting on alleged 27 August attended by majority stockholders, was included in the Minutes attached by Dimalanta in his Answer.[14] Thus, the said falsification is inexistent. Appellants also argue that both Appellee and Dimalanta were absent in the alleged 27 Meeting so they could not have made comments and corrections to the final version of such meeting's minutes.[15] They also allege that Dimalanta presented no proof that he was forced to execute the required documents.[16]

Appellee in its answer alleges that the 27 August meeting did not happen, there was no Minutes of the Meeting for 27 August and it was merely appended on this Appeal.[17] The minutes also did not categorically state that the stockholders[18] nor the board of directors approve the increase in capital stock.[19]

In this issue, we rule against the appellant. CRMD in its Order did not rule on the existence of the 27 August meeting. It ruled that the stockholder's meeting for the specifically called for the purpose of approving the increase of capital stock by 2/3 vote of the outstanding capital stock does not exist.[20] This vote requirement is different from the requirement that the increase be approved by majority of the

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10 *Id.* Anx. 4.
11 *Id.* Anx. 9.
12 *Id.* at 4.
13 *Id.* at 5–7.
14 *Id.* at 4.
15 *Id.*
16 *Id.*
17 Reply Memo. ¶11.
18 *Id.* ¶12.
19 *Id.* ¶13.
20 Appeal Memo. Anx. 9 at. 6–8.

Board under Sec. 38 of the Corporation Code[21], which the Appellants allege to have existed.[22] Appellants dwelled on the circumstances of the preparation of the Minutes by Dimalanta, which CRMD only treated as corroborating evidence to prove the non-existence of the stockholder's meeting.[23]

The allegations that the attached Minutes in Dimalanta's answer contains the alleged inserted sentence and that Dimalanta and Appellee is absent do not mean that the submitted requirements are not falsified. At best, it only proves that the Minutes of the Meeting was not falsified, and that a meeting occurred on 27 August with majority of the board approving the increase. It does not prove that the 2/3 vote of the outstanding capital stock was obtained as required by law. Appellee is correct to say that no Minutes of the 27 August meeting, or notice of such meeting was presented by Appellants as evidence during the proceedings before CRMD. The fact that it was only presented in this instance cast doubt on its validity.

The allegations that Dimalanta signed his name on three separate documents and that he knew of the legal consequences does not disprove that he was forced to execute the required documents. As stated by the CRMD in its Order:

> [D]espite the opportunity to support their claim of regularity of the assailed documents, not a single iota of evidence was adduced by [Appellants] to prove the holding of the supposed meeting of August 27, 2013, such as written notices and minutes of such meetings. Neither did they deny the statements made by Respondent Dominicata.[24]

On the second issue, Appellants argue that Appellee's disinterest in the corporation aside from preservation of her percentage of ownership,[25] and application for a new license for a new manning agency, Fil-Crew Maritime and Offshore Services, Inc, constitute as waiver of notice to the stockholder's meeting.[26] On this issue, we reiterate CRMD's ruling on the assailed Order, which remains to be uncontroverted by Appellants rehashed arguments:

> While it may be true that notice may be waived impliedly by any stockholder, mere actuation of disinterest of a stockholder to a planned corporate action does not excuse the corporation from complying with this essential requisite. What is meant by implied notice, as referred to in Section 50 of the Corporation Code, "is participation by the stockholder without any objection to the failure of the corporation to send written notice for this meeting.[27]

21 "Section 38. Power to increase or decrease capital stock; incur, create or increase bonded indebtedness. - No corporation shall increase or decrease its capital stock or incur, create or increase any bonded indebtedness unless approved by a majority vote of the board of directors and, at a stockholder's meeting duly called for the purpose, two-thirds (2/3) of the outstanding capital stock shall favor the increase or diminution of the capital stock, or the incurring, creating or increasing of any bonded indebtedness. ..." CORPORATION CODE § 38.
22 Appeal Memo. at 6–7.
23 *Id.* at 4.
24 *Id.* Anx. 9 at 8.
25 Appeal Memo. at 6.
26 *Id.*
27 *Id.* at 7–8.

WHEREFORE, premises considered, the instant Appeal is hereby **DENIED** for lack of merit.

SO ORDERED.

Pasay City, Philippines, 17 August 2017.

TERESITA J. HERBOSA
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

ELIAS JAMES G. VITERBO
Commissioner

EMILIO B. AQUINO
Commissioner