REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TAGUIG CITY GOVERNMENT, HON. MA. LAARNI CAYETANO, in her capacity as the (former) Mayor of the City of Taguig, and ATTY. MARIANITO MIRANDA, in his capacity as the (former) Treasurer of the City of Taguig, *Petitioners,*	**CTA AC No. 229** (RTC Civil Case No. 74669)
- versus –	
SERENDRA CONDOMINIUM CORPORATION, *Respondent.*	

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SERENDRA CONDOMINIUM CORPORATION, *Petitioner,*	**CTA AC No. 230** (RTC Civil Case No. 74669)
	Members:
	CASTAÑEDA, JR., *Chairperson,* and **BACORRO-VILLENA,** *JJ.*
- versus –	
TAGUIG CITY GOVERNMENT, HON. MA. LAARNI CAYETANO, in her capacity as the (former) Mayor of the City of Taguig, and ATTY. MARIANITO MIRANDA, in his capacity as the (former) Treasurer of the City of Taguig, *Respondents.*	Promulgated: SEP 1 0 2020 4:05 p.m.

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DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

This is a consolidation of respective Petitions filed by Taguig City Government et. al. and Serendra Condominium Corporation, assailing the Decision dated March 18, 2019 (Assailed Decision)[1] rendered by the Regional Trial Court (RTC), Branch 153 of Taguig City in Civil Case No. 74669 entitled *Serendra Condominium Corporation v. Taguig City Government, Hon. Ma. Laarni Cayetano, in her capacity as the Mayor of the City of Taguig, and Atty. Marianito Miranda (retired) in his capacity as the Treasurer of the City of Taguig* and the Order dated August 1, 2019[2] denying the parties' respective Motions for Reconsideration against the Assailed Decision.

THE PARTIES

Taguig City Government (TCG) is a local government unit created by virtue of Republic Act (RA) No. 8487, which may be served with notices and other processes of the Court through Hon. Lino Edgardo Cayetano, the present executive head and mayor of Taguig City at Taguig City Hall, Gen. A. Luna Street, Taguig City.[3]

Hon. Ma. Laarni Cayetano is the former Executive Head and Mayor of the City of Taguig who was succeeded by Hon. Lino Edgardo S. Cayetano, the incumbent Mayor of the City of Taguig.[4]

Atty. Marianito Miranda, the former City Treasurer of City of Taguig, was succeeded by Atty. Jonathan Voltaire L. Enriquez, the acting City Treasurer of Taguig City.[5]

Serendra Condominium Corporation (SCC) is a domestic non-stock, non-profit corporation duly organized and existing under Philippine laws with principal office address at Serendra, 11th Avenue, Bonifacio Global City, Taguig City.[6]

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[1] CTA AC No. 229 Docket, pp. 51-65.
[2] *Id.*, pp. 66-67.
[3] Consolidated Memorandum (For Taguig City Government, Taguig City Mayor, and Taguig City Treasurer, CTA AC No. 229 Docket, p. 356.
[4] *Id.*
[5] *Id.*
[6] Par. 8, Memorandum, CTA AC No. 229 Docket, p. 422.

THE FACTS

The facts of the present case, as found by the RTC in the Assailed Decision, are as follows:[7]

> "As alleged in the complaint, plaintiff SCC was created pursuant to Republic Act 4726, otherwise known as the Condominium Act. Its membership comprises the various unit owners of the condominium in Serendra. The Articles of Incorporation of SCC states that its primary purposes are to own or hold title to the common areas of Serendra, and to manage and administer the operation of Serendra and the affairs of its members pursuant to and in accordance with the Condominium Act and the Master Deed.
>
> On January 19, 2013, plaintiff SCC applied for the renewal of its permit to operate in the City of Taguig for the year 2013. As a condition precedent for the renewal of the said permit, defendant Taguig City Government required plaintiff to pay the amount of Php5,710,137.72[,] the said amount was paid by plaintiff on January 25, 2013 as shown by Official Receipt No. A-174629. Based from (sic) the official receipt, the total amount is broken down as follows: a) business tax of Php2,333,843.32; b) environmental impact fee of Php2,682,283.80; c) Fire Code of Php851.00; d) environment impact fee of Php684,749.60; e) building inspection fee of Php160.00; f) business plate/sticker of Php150.00; g) electrical inspection fee of Php200.00; h) fire permit fee of Php200.00; i) Form Fee of Php150.00; j) Mayor's permit fee of Php6,000.00; k) Mechanical inspection fee of Php200.00; l) Medical/Health Inspection fee of Php10.00; m) Plumbing Inspection Fee of Php100.00; n) Sanitary Inspection Fee of Php1,100.00; o) Signboard fee of Php140.00.
>
> In imposing the said amount, defendant City Government of Taguig City considered plaintiff as engaged into (sic) business. Thus, the imposition of the amount of Php2,333,843.32 as business tax. Apparently, defendant's basis for the computation of the said business tax is the

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[7] CTA AC No. 229 Docket, pp. 51-60.

association dues collected by plaintiff from its members for the year 2012 amounting to Php43,014,541.26.

However, the said tax imposition is not legal.

Another factor for the increase of the fees collected against plaintiff is the imposition of two (2) environmental impact fees amounting to Php2,682,283.80 and Php684,749.60 which are higher than what was collected for 2012. However, the imposition of environmental impact fee is prescribed under Ordinance 116, Series of 2008 of the City of Taguig government. Based on the said ordinance, environmental impact fee is chargeable only to entities engaged into (sic) business within the city of Taguig.

Plaintiff further averred that aside from the business tax and environmental impact fee, defendant City Government of Taguig also collected from plaintiff the amount of Php150.00 for business plate/sticker which fee is chargeable only to business entity.

The Taguig Revenue Code and the Local Government Code define 'business' as a trade or commercial activity regularly engaged in as a means of livelihood or with a profit. Again, plaintiff argued, it does not fall into this category or definition.

Plaintiff posits that the collection of the aforementioned impositions is without factual or legal bases. Despite the Letter dated January 12, 2015, sent to the defendant, asking the latter for a tax refund or tax credit for the said erroneous impositions, defendant failed and refused to do so. Hence, the filing of the instant complaint.

In their Answer, defendants denied the material allegations of the complaint and raised affirmative and special defenses.

Defendants claimed that the complaint failed to state a cause of action. Defendants specifically cited the fact that plaintiff or the complaint failed to mention or specify any provision of law or supporting jurisprudence which shows that it is exempt from the imposition of the local business taxes, environmental impact fees and business plate/sticker fees.

Defendants claimed that the authority to collect the above impositions is expressly vested upon them under the 1987 Philippine Constitution, the Local Government Code and the Taguig Revenue Code.

They further asserted that even assuming arguendo that the association dues collected by condominium corporations are not subject to the imposition of local business taxes, the complaint failed to show that plaintiff's revenues are exclusively comprised of association dues collected from its members and that that (sic) the same are used to defray the expenses needed for the administration and management of the condominium projects.

A perusal of plaintiff's Statement of Revenue and Expenses for the Year Ended December 2012 (With Comparative Figures For 2011) ('Statement') which formed part of its Audited Financial Statement ('AFS') for the calendar year ended December 2012, showed that plaintiff has an 'Excess of Revenue over Expenses' amounting to Php5,149,007.00 for the said year which indicates that plaintiff has a revenue component which is not related to or directly allocated for the expenses necessary for the management, maintenance and operation of the condominium project. The same Statement will likewise show that plaintiff derives income or revenues from activities or sources other than the collection of membership dues, such as the renting out of its facilities and function rooms/social halls, or requiring payment for the use of its swimming pool and other amenities. While the revenue was denominated as 'other membership dues', the notes on the AFS showed that the same was derived from income-generating or profit-oriented activities, as stated. Thus, such amounts actually represent payments received by plaintiff from a regular or habitual business activity.

Further, the imposition of environmental impact fees from residential condominium corporations is expressly sanctioned under Taguig City Ordinance No. 111, Series of 2007, as amended by Taguig City Ordinance No. 116, Series of 2008. To allow plaintiff to contest the validity of the said ordinance would run counter to the procedure outlined under Section 187 of the Local Government Code.

Defendants argued that, in sum, plaintiff is not entitled to the reliefs prayed for in the complaint.

By way of Reply, plaintiff denied defendant's assertions in the Answer, and reiterated its entitlement to the reliefs prayed for.

During the pre-trial conference, the parties stipulated on the following matters:

1. Plaintiff SCC is a non-stock, non-profit corporation incorporated on March 12, 2008 as per the Certificate of Incorporation issued by the Securities and Exchange Commission (SEC).
2. The amount charged against and paid by SCC for local taxes to defendant City Government of Taguig for the renewal of its permit in 2013 was Five Million Seven Hundred Ten Thousand One Hundred Thirty[-]Seven Pesos and Seventy[-]Two Centavos (Php5,710,137.72).
3. Defendant City Government of Taguig imposed environmental impact fees amounting to Php2,682,283.80 and Php684,749.60 in 2013.

The issues, as simplified, are as follows:

1. Whether or not plaintiff SCC may be lawfully charged with local business taxes and environmental impact fees, and/or whether or not plaintiff SCC is entitled to tax refund;
2. Whether or not plaintiff's claim for attorney's fees has any factual or legal basis.

Upon the termination of the pre-trial conference, trial on the merits ensued.

Nestor San Agustin (December 7, 2017), Veronica Guzman (May 24, 2018) and Jennifer Camo testified (August 23, 2018) for the plaintiff.

San Agustin, former President and Chairman of the Board of Trustees of Serendra Condominium Corporation (SCC) for the fiscal year 2013-2014, testified that as a former officer of SCC for the aforementioned period, he presided over all meetings of the Board and of the members of the corporation, represented the corporation in and executed all contracts and agreements entered into for and in behalf of the corporation.

He had the general and active management of the affairs of the corporation. He executed and saw to it that the policies and decisions of the board are properly executed and complied with.

SCC is a non-stock, non-profit condominium corporation tasked with overseeing the common areas of the SCC.

SCC filed the instant case because of the erroneous and illegal imposition and collection of business taxes, environmental impact fees and business plate or sticker fees by defendant city government of Taguig against SCC. Such imposition and collection was (sic) made on the erroneous premise that SCC is a business entity and/or doing business. It is SCC's position that it is not subject to local business tax and environmental impact fees as it is not engaged in business.

On January 12, 2015, SCC wrote to the defendants seeking to refund or grant ta[x] credit to SCC the business tax, environmental impact fee and business plate/sticker fee in the total amount of Php5,701,026.72. Despite the said letter, however, the Taguig city government refused the request of SCC.

Thus, on January 25, 2013, SCC paid the amount of Php5,710,137.72, since the same was necessary for the renewal of the permit of SCC with the Taguig city government.

He averred that they were not asking for the refund or tax credit of the entire amount required by the Taguig city government for the renewal of the permit, but only for the imposed amount of business tax (Php2,333,843.32), fr two environmental impact fees (Php2,682,283.80 and Php684,749.80) and the business plate/sticker (Php150.00), in the total amount of Php5,701,026.72.

Pursuant to SCC's Master Deed with Declarations of Restrictions, the SCC was formed and organized pursuant to Republic Act 4726 and the Corporation Code of the Philippines to hold title to the common areas of Serendra Condominium. The same purpose is reflected in the Articles of Incorporation of SCC. More so, the By-Laws of SCC states that it is a non-stock, non-profit organization, formed pursuant to Section 10 of the Condominium Act.

As a non-stock, non-profit corporation, SCC manages and administers its operations and the affairs of its members by collecting association dues from its members to help pay for the upkeep and maintenance of the condominium, and eventually manage and manage (sic) its operations and affairs of its members. SCC does not make a profit out of the collection of the association dues. All amounts collected are allocated and defrayed for the payment of essential services and expenses of the SCC which are necessary for the management and administration of the affairs of its members and for the operation of the condominium.

The essential services are those which relate to property management, power, security, preventive maintenance, repairs, and other essential expenses.

On cross-examination, he testified that their lawyer briefed him about the matter subject of this case.

Guzman testified that she is the current Head of the Finance Committee of SCC, and has held the position as a member of the Finance Committee in the previous years. She has been part of the Finance Committee of SCC since 2012. The Finance Committee (FinCom) of SCC is responsible for overseeing all financial related matters of the SCC including, but not limited to, financial management and treasury matters.

Upon the other hand, as the current Head and Chairperson, she takes the lead in organizing FinCom, preside during the committee meetings, among others.

She is well-versed in the financials and source of funds of SCC.

SCC's sources of funding are the association dues collected from its members. There is no fixed amount of collection for the association dues. All collections, however, are reflected in the Audited Financial Statements of the corresponding year.

On a yearly basis, SCC spends or pays for the usual or common expenses such as property management fees, security, janitorial, among others. These expenses are shown in the Approved Budget of Serendra Condominium Corporation for the years 2013 to 2015. SCC pays for such expenses because they are necessary to maintain the condominium complex in good and sound condition and to comply with the government requirements on condominium corporations. The expenses actually paid are reflected in the yearly Audited Financial Statements. These expenses are paid for using the association dues collected from the members. All the funds collected from the association dues are allocated and used for the management, operation and general upkeep of the common areas.

However, despite the fact that SCC is not engaged in business, the city government of Taguig imposed and collected the questioned taxes. The total amount imposed by the city of Taguig is Php5,710,137.22. SCC paid this amount.

On cross-examination, she reiterated that SCC is non-profit and that the association dues collected are held in trust to cover the expenses of SCC.

She confirmed that in the year 2012, the city government of Taguig likewise imposed the same business taxes, environmental impact fees and business plate/sticker. SCC paid those taxes without contest. She claimed however, that the amount collected for the said year was only Php52,000.00.

Camo, a Certified Public Accountant (CPA) and an employee of Ayala Property Management Corporation ('AMPC'), testified that she serves as one of the Finance Managers and and (sic) has been assigned as such for SCC for four years.

As a Finance Manager, she is tasked to manage the bookkeeping, monitoring and control of financial transactions of the operating unit, and provide accurate and reliable information to assist management and operations in evaluating the results of operations.

As a Finance Manager, she knows that the source of funding of SCC is the association dues from its members. The association dues collected vary from year to year. However, based from (sic) the Audited Financial Statement of SCC for the years 2013, 2014 and 2015, the amount collected were Php243,413,366.00, Php282,317,188.00 and Php336,126,682.00, respectively.

The surpluses in the association dues could be savings initiative from the operations like utility usage which is controllable expense, or negotiated contract amount from service providers or projects. The surpluses are being retained at the Member's equity. Member's equity is residual amount of assets over liabilities.

The surplus is not returned to the members, and neither is it distributed to members as dividends. Rather, it is being reserved for future major projects for maintaining the common area of the property. This fact is reflected in the audited financial statements.

The yearly expenses paid for by SCC are reflected in the Audited Financial Statements for the corresponding year. These expenses, which are necessary for the maintenance and administration of the common areas of SCC, are paid for using the association dues collected from the members.

All funds collected from the association dues are used to pay for the expenses every year except for the surpluses which forms part of the member's equity.

For the year 2013, SCC paid the amount of Php5,710,137.72 as local taxes to the city of Taguig. SCC has not been paying such substantial amount of local taxes, except starting the year 2013. Based on SCC records, from 2009 to 2012, SCC pays only Php50,000.00 to Php70,000.00 a year.

The sudden increase in the charging of local taxes was caused by the charging of an environmental impact fee of Php2,682,283.80. There was also a charge for Php684,749.60 for environmental impact fee in 2012 which was collected in 2013.

On cross-examination, she testified that she is not aware of the difference between local taxes and local fees.

Upon the conclusion of the presentation of testimonial evidence for the plaintiff, the latter formally offered its documentary evidence consisting of Exhibits 'A' to 'Z' and 'AA' to 'BB'. The said documentary evidence was admitted pursuant to the court's Order dated October 1, 2018.

On the part of the defendants, Ma. Teresa Bondad was presented.

Bondad, License Officer III of the Business Permits & Licensing Office ('BPLO') of the City of Taguig, testified that she has been connected with the BPLO sometime around 1992.

As License Officer III of BPLO[,] [s]he is tasked to handle, evaluate and process business permit applications filed with the BPLO. Her functions include the examination and evaluation of the documentary requirements submitted by business permit applicants and preparing the computation of local taxes, fees and charges which applicants are required to pay prior to the issuance of business permits.

She was the one who processed the business permit application of plaintiff SCC. She examined the documents of SCC and then assessed the local taxes and fees to be paid by SCC as a prerequisite for the issuance of its business permit for the year 2013.

SCC was assessed for business tax, environmental impact fee, and other regulatory fees. SCC paid the total amount of Php5,710,137.72.

The aforementioned imposition was based on the regular procedure and as a requirement under Municipal Ordinance No. 24, Series of 1993, otherwise known as 'The Revenue Code of Taguig', as amended by Ordinance No. 85, Series of 2005. BIR Revenue Memorandum Circular No. 65-2012 was likewise used as a basis. As for the environmental impact fee, Ordinance No. 111, series of 2007, as amended by [O]rdinance No. 116, series of 2008, were used as bases.

The legal basis for the computation of the business tax is Section 75 of Ordinance No. 85, series of 2005.

The payment of business plate/sticker fee of Php150.00 is required by the (sic) as a minimal fee for the processing of all applications for the issuance or renewal of the local business permits.

No cross-examination was conducted on the said witness.

Upon the conclusion of the presentation of defendant's evidence, defendant's documentary evidence consisting of Exhibits '1' to '4' were formally offered, and admitted by this court.

The case was thereafter considered submitted for decision."

On March 18, 2019, the RTC rendered the Assailed Decision. Aggrieved, both parties filed their respective Motions for Partial Reconsideration which the RTC denied in its Order dated August 1, 2019.

On September 23, 2019, SCC filed its Petition for Review docketed as CTA AC No. 230.[8] Within the extended period granted by this Court,[9] TCG et. al. filed via registered mail on September 30, 2019 their Petition for Partial Review docketed as CTA AC No. 229.[10]

[8] CTA AC No. 230 Docket, pp. 5-32.
[9] Resolution dated September 27, 2019, CTA AC No. 229, p. 13.
[10] CTA AC No. 229, pp. 14-48.

Within an extended period granted by this Court,[11] TCG et. al. filed on November 25, 2019 via registered mail their Comment/Opposition (Re: Petition for Review dated 20 September 2019).[12] Likewise within the extended period granted by this Court,[13] SCC filed its Motion for Reconsideration of the Resolution dated 11 November 2019 with Motion to Admit Comment (Re: Petition for Partial Review dated 30 September 2019) and attached therein its Comment (Re: Petition for Review dated 30 September 2019) on December 9, 2019.[14]

Meanwhile, on November 28, 2019 SCC filed a Manifestation with Motion for Consolidation[15] praying that CTA AC No. 229 be consolidated with CTA AC No. 230. This Court granted SCC's Motion for Consolidation in a Resolution dated January 22, 2020.[16] In the same Resolution, SCC's Comment to TCG et. al.'s Petition for Partial Review attached to its Motion for Reconsideration was admitted by this Court.

On February 17, 2020, the RTC forwarded to this Court the entire original records of Civil Case No. 74669.[17]

Within an extended period granted by this Court,[18] SCC filed on December 23, 2019 via registered mail its Reply (To Respondent's Comment/Opposition dated 25 November 2019).[19]

On March 4, 2020, TCG et. al. filed via registered mail their Consolidated Memorandum.[20] SCC, on the other hand, filed its Memorandum on March 9, 2020[21] also via registered mail.

In a Resolution dated June 15, 2020,[22] this Court submitted the present case for decision.

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[11] Resolution dated November 21, 2019, CTA AC No. 230 Docket, p. 282; Resolution dated November 22, 2019, CTA AC No. 230 Docket, p. 89.
[12] CTA AC No. 230 Docket, pp. 295-327.
[13] Resolution dated November 11, 2019, CTA AC No. 229 Docket, p. 81; Resolution dated December 2, 2019, CTA AC No. 229 Docket, p. 89.
[14] CTA AC No. 229 Docket, pp. 90-133.
[15] CTA AC No. 230 Docket, pp. 290-293.
[16] CTA AC No. 229 Docket, pp. 323-325.
[17] *Id.*, p. 348.
[18] Resolution dated January 6, 2020, CTA AC No. 230 Docket, p. 340.
[19] CTA AC No. 230 Docket, pp. 341-373.
[20] CTA AC No. 229 Docket, pp. 353-415.
[21] *Id.*, pp. 419-479.
[22] *Id.*, pp. 482-483.

THE ISSUES

TCG et. al. submitted the following issues for this Court's decision, to wit:[23]

"A.
WHETHER OR NOT SCC IS EXEMPT FROM THE PAYMENT OF LBT [AND] BUSINESS PLATE/STICKER FEE.

B.
WHETHER OR NOT SCC IS LIABLE FOR THE PAYMENT OF THE EIF.

C.
ASSUMING SCC COULD NOT BE LAWFULLY IMPOSED WITH LBT, WHETHER OR NOT TAGUIG CITY GOVERNMENT IS LIABLE FOR LEGAL INTEREST ON THE AMOUNT ORDERED TO BE REFUNDED TO SCC AT THE RATE OF SIX PERCENT (6%) PER ANNUM COMMENCING ON THE DATE OF THE FILING OF THE COMPLAINT, UNTIL THE AFORESAID AMOUNT IS FULLY PAID.

D.
WHETHER OR NOT TAGUIG CITY GOVERNMENT IS LIABLE FOR ATTORNEY'S FEES IN THE AMOUNT OF SEVENTY THOUSAND PESOS (PHP70,000) PLUS LITIGATION EXPENSES AND COSTS OF SUIT."

SCC, on the other hand, raises the following issues:[24]

"WHETHER THE COURT A QUO COMMITTED GRAVE BUT REVERSIBLE ERROR WHEN IT RENDERED THE ASSAILED DECISION FINDING SCC LIABLE FOR THE PAYMENT OF ENVIRONMENTAL IMPACT FEES AND WHEN IT ISSUED THE ASSAILED ORDER DENYING ITS MOTION FOR PARTIAL RECONSIDERATION.

WHETHER THE COURT A QUO COM[M]ITTED GRAVE BUT REVERSIBLE ERROR WHEN IT RENDERED THE ASSAILED DECISION FINDING SCC EXEMPT FROM THE PAYMENT OF BUSINESS TAX AND BUSINESS PLATE/STICKER FEE.

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[23] *Id.*, p. 367.
[24] *Id.*, p. 431.

WHETHER OR NOT TAGUIG CITY, *ET. AL.* ARE LIABLE FOR ATTORNEY'S FEES, LITIGATION EXPENSES AND COST OF SUIT."

THE COURT'S RULING

CTA AC No. 229

The Petition shall be partially granted.

***Yamane* serves as a precedent to the present case**

In their Petition for Review, TCG et. al. contend that the case of *Yamane v. BA Lepanto Condominium*,[25] does not apply to the present case.[26] They claim that the Supreme Court did not categorically rule in *Yamane* that condominium corporations are exempt from local business taxation[27] and also, the Supreme Court did not therein preclude the possibility that a condominium corporation will engage in activities for profit in violation of the Condominium Act.[28]

In its Comment, SCC disagrees and stresses that *Yamane* applies to the present case.[29] It is adamant in its position that, as a condominium corporation, it is neither engaged in business nor organized for profit.[30] Thus, it is not liable for local business tax (LBT) and business plate/sticker fee.[31]

TCG et. al.'s contention is unmeritorious.

After careful review of the facts, this Court finds that *Yamane* applies to the present case. To put things into proper perspective, a brief discussion of the relevant facts and of the ruling in the said case is in order. *gr*

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[25] G.R. No. 154993, October 25, 2005, 474 SCRA 258 ("*Yamane*").
[26] *Id.*, pp. 22-24.
[27] *Id.*
[28] *Id.*
[29] *Id.*, pp. 102-117.
[30] *Id.*
[31] *Id.*

In *Yamane*, the taxpayer, a condominium corporation, was assessed with LBT by the City Treasurer of Makati. The assessment for LBT was based on the condominium corporation's collection of assessment from unit owners. The City Treasurer claimed that the taxpayer is engaged in business because the latter collects assessment from unit owners. The taxpayer duly protested the assessment mainly on the ground that, as a condominium corporation, it is neither engaged in business nor organized for profit. When its protest was denied, the taxpayer appealed its case which eventually reached the Supreme Court. In ruling in favor of the taxpayer, the Supreme Court held that by their nature, condominium corporations are generally exempt from local business taxation under the Local Government Code, irrespective of any local ordinance that seeks to declare otherwise. The Supreme Court declared that condominium corporations are not engaged in business when they collect assessments or dues from unit owners. By way of exception though, the Supreme Court held that condominium corporations may be held liable for business taxes on the basis of estoppel. The Supreme Court ruled:

> "Still, we can note a possible exception to the rule. It is not unthinkable that the unit owners of a condominium would band together to engage in activities for profit under the shelter of the condominium corporation. Such activity would be prohibited under the Condominium Act, but if the fact is established, we see no reason why the condominium corporation may [not] be made liable by the local government unit for business taxes. Even though such activities would be considered as *ultra vires*, since they are engaged in beyond the legal capacity of the condominium corporation, the principle of estoppel would preclude the corporation or its officers and members from invoking the void nature of its undertakings for profit as a means of acquitting itself of tax liability."[32]

In substantially similar fashion, the taxpayer in the present case is also a condominium corporation which was required to pay LBT, among others, by the city treasurer. The city treasurer in the present case likewise based its computation of the LBT on the amount of association dues collected by the condominium corporation from its members. The taxpayer disagrees with the city treasurer and claims that it is not subject to LBT on the ground that as a condominium corporation, it is not engaged in trade or business. The local treasurer took the opposite view and maintains that the taxpayer is engaged in

[32] G.R. No. 154993, October 25, 2005, 474 SCRA 283, 284.

trade or business. Specifically, the city treasurer posits that the taxpayer is engaged in the sale of service and that the dues and fees received by the condominium corporation from the unit members and tenants constitute income payments or compensation for the services furnished to them.

As may be gleaned from the discussion above, it is fairly evident that the relevant facts and the issue involved in *Yamane* and those of the present case are substantially the same. Accordingly, it behooves this Court to adhere to the Supreme Court's ruling in *Yamane* and apply the same as precedent to the present case.

The doctrine of *stare decisis et non quieta movere* is a doctrine which requires adherence to judicial precedents and not to unsettle things which are established. Article 8 of the Civil Code of the Philippines serves as the statutory embodiment of the doctrine, which reads:

> "ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."

As fittingly enunciated by the Supreme Court *En Banc* in *Umali v. The Judicial and Bar Council*,[33] thus:

> "<u>The doctrine enjoins adherence to judicial precedents and requires courts in a country to follow the rule established in a decision of the Supreme Court thereof. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land.</u> The doctrine is based on the principle that **once a question of law has been examined and decided, it should be deemed settled and closed to further argument**. The same is grounded on the necessity for securing certainty and stability of judicial decisions, thus, time and again, the court has held that it is a very desirable and necessary judicial practice that **<u>when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same</u>**. <u>It simply means that for the sake of certainty, a conclusion</u>

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[33] G.R. No. 228628, July 25, 2017, 832 SCRA 227, 228.

> reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue. The doctrine has assumed such value in our judicial system that the Court has ruled that '[a]bandonment thereof must be based only on strong and compelling reasons, otherwise, the becoming virtue of predictability which is expected from this Court would be immeasurably affected and the public's confidence in the stability of the solemn pronouncements diminished.' **Verily, only upon showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis,* can the courts be justified in setting aside the same.**" *(Underscoring supplied and citations omitted)*

This Court does not find any sufficient justification much less a strong and compelling reason to deviate from or disregard the precedential value of *Yamane* in the present case.

SCC is not engaged in trade or business and, hence, is not subject to local business tax as well as to business plate/sticker fee

TCG et. al. maintain that SCC is engaged in business and, as such, is not exempt from LBT.[34] To support their position that SCC is engaged in business, TCG et. al. cited one of the secondary purposes of SCC in its Articles of Incorporation which, according to TCG et. al., is contrary to or inconsistent with Section 10 of the Condominium Act and its Master Deed.[35] In their view, this secondary purpose only shows that SCC is not restricted by its Articles of Incorporation to engage in profit-making activities notwithstanding the fact that doing so is in violation of Section 10 of the Condominium Act and SCC's Master Deed.[36]

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[34] CTA AC No. 229 Docket, pp. 24-34.
[35] *Id.*
[36] *Id.*

TCG et. al. likewise aver that their authority to impose the LBT and business plate/sticker fee against SCC is vested by the Constitution and the Local Government Code of 1991, as amended (LGC).[37] Accordingly, Section 75 of Taguig Revenue Code as amended, specifically renders SCC liable for LBT and business plate/sticker fee.[38] TCG et. al. contend that SCC is being held liable for LBT as a contractor because of the method of its operation as shown by its 2012-2013 Audited Financial Statement, which necessarily reveals that it is engaged in the sale of service for a fee.[39]

It is also the contention of TCG et. al. that Revenue Memorandum Circular (RMC) No. 65-2012 issued by the BIR is instructive of the nature of the membership dues or fees paid by the members of SCC, that is, they are compensation for the beneficial services provided to them by SCC.[40] As quoted by TCG et. al., this issuance purportedly held that the "amounts paid in as dues or fees by members and tenants of a condominium corporation form part of the gross income of the latter x x x because a condominium corporation furnishes its members and tenants with benefits, advantages, and privileges in return for such payments. For tax purposes, the association dues, membership fees, and other assessments/charges collected by a condominium corporation constitute income payments or compensation for beneficial services it provides to its members and tenants".[41]

On the other hand, SCC is firm on its position that it is not created for the purpose of engaging in business or with a view to profit.[42] SCC added that it merely derives funds solely from its members in the form of association dues and as payment for the use of certain facilities and amenities, its act of collecting funds does not *ipso facto* amount to doing business.[43]

SCC likewise asserts that while it is true that Taguig City is authorized to impose taxes, it is only allowed to impose taxes on business.[44] SCC also maintains that it is not a contractor within the meaning of the Taguig Revenue Code.[45] gr

[37] CTA AC No. 229 Docket, pp. 35-36.
[38] *Id.*, pp. 36-39.
[39] *Id.*, p. 39.
[40] *Id.*, p. 40.
[41] *Id.*
[42] *Id.*, pp. 108-117.
[43] *Id.*
[44] *Id.*, pp. 122-125.
[45] *Id.*, pp. 125-126.

As regards the invocation by TCG et. al. of RMC No. 65-2012, SCC avers that TCG et. al. never raised nor claimed the said issuance as a defense in the proceedings before the lower court.[46] Having never raised such issue there, it cannot be allowed to raise the same for the first time on appeal.[47]

TCG et. al.'s arguments are ill-founded.

It bears noting that TCG et. al. had invoked RMC No. 65-2012 issued by the BIR to buttress its position that the dues and fees paid by members of a condominium corporation should be treated as compensation for services rendered by the condominium corporation to its members. Therefore, according to TCG et. al., SCC should be considered as engaged in business, particularly, as a seller of service.

Apparently, there is basis to say that the TCG et. al.'s invocation of RMC No. 65-2012 proved to be detrimental to their cause.

In the recent case of *In the Matter of Declaratory Relief on the Validity of BIR Revenue Memorandum Circular No. 65-2012 "Clarifying the Taxability of Association Dues, Membership Fees and Other Assessments/Charges Collected by Condominium Corporations"*;[48] the Supreme Court affirmed the ruling of the Regional Trial Court of Makati, Branch 146 declaring RMC No. 65-2012 as invalid. The Supreme Court agreed that RMC No. 65-2012 is invalid for ordaining that "gross receipts of condominium corporations including association dues, membership fees, and other assessments/charges are subject to VAT, income tax and income payments made to it are subject to applicable withholding taxes".[49] In so doing, RMC No. 65-2012 unduly expanded the law and created an additional tax burden on condominium corporations beyond what the law itself clearly and expressly declares, according to the Supreme Court.[50] Interestingly, the Supreme Court came to such a conclusion by relying on its ruling previously articulated in *Yamane*.

In *In Re BIR RMC 65-2012*, the Supreme Court reiterated its view originally pronounced in *Yamane* that a condominium corporation

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[46] *Id.*, p. 126.
[47] *Id.*
[48] G.R. Nos. 215801 & 218924, January 15, 2020 ("*In Re BIR RMC No. 65-2012*").
[49] *Id.*, p. 32.
[50] *Id.*, p. 30.

cannot be considered as engaged in trade or busines because it is "not designed to engage in activities that generate income or profit" but was "especially formed for the purpose of holding title to the common area and exists only for the benefit of the condominium owners".[51] The Supreme Court also emphasized that association dues, membership fees, and other assessments/charges collected by the condominium corporation from its members do not constitute gain or profit but are "collected purely for the benefit of the condominium owners and are the incidental consequence of a condominium corporation's responsibility to effectively oversee, maintain, or even improve the common areas of the condominium as well as its governance".[52]

In addition, the Supreme Court categorically held in *In Re BIR RMC No. 65-2012* that association dues, membership fees, and other assessments/charges collected by a condominium corporation from its members do not arise from transactions involving the sale, barter, or exchange of goods or property nor are they generated by the performance of services.[53] The Supreme Court further explained that a condominium corporation cannot be considered as rendering services to the unit owners for a fee, remuneration or consideration.[54] It added that "[a]ssociation dues, membership fees, and other assessments/charges form part of a pool from which a condominium corporation must draw funds in order to bear the costs for maintenance, repair, improvement, reconstruction expenses and other administrative expenses".[55]

With both *Yamane* and *In Re RMC No. 65-2012* serving as solid jurisprudential foundation, this Court holds that SCC is not engaged in trade or business and thus, it is not subject to LBT. This is true notwithstanding any provision of Taguig Revenue Code that seeks to declare otherwise.

This Court is not disposed to rule that SCC is engaged in business merely on the basis of the secondary purpose stated in SCC's Articles of Incorporation as cited by TCG et. al.[56] without any clear and convincing proof that SCC had *actually* engaged in profit-making activities and had derived any income or profit therefrom.

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[51] *Id.*, pp. 20-22.
[52] *Id.*, pp. 24-25.
[53] *Id.*, p. 25.
[54] *Id.*, p. 27.
[55] *Id.*
[56] Par. (h), Article II, SCC's Articles of Incorporation, Exhibit "C", RTC Records, Exhibits Vol. II, p. 63.

As discussed above, the Supreme Court had categorically recognized in *Yamane* the possibility that unit owners of a condominium would band together to engage in activities for profit under the shelter of a condominium corporation and, if the said fact is duly established, they may be held liable for LBT on the basis of *estoppel* notwithstanding the *ultra vires* or void nature of their action. Considering that the liability of condominium corporation members for local business taxes can only be grounded on *estoppel*, the facts showing their *actual* engagement in profit-making activities under the shelter of the condominium corporation must be duly proven by clear and convincing evidence.[57] Needless to say, the finding of liability on the part of the condominium corporation and/or its members for LBT cannot be sustained by mere argument or doubtful inference.[58]

SCC's 2012-2013 Audited Financial Statement (AFS) likewise failed to support TCG et. al.'s assertion that SCC is engaged in business. The said document does not prove that SCC had earned any income from profit-making ventures. It only indicates the amount of membership dues and other fees or charges collected by SCC from its unit owners. What is clear in the present case, though, is that the LBT imposed by TCG et. al. on SCC was computed based on the association dues collected from its members for the year 2012 amounting to ₱43,014,541.26.[59] And as held by the Supreme Court in *In Re BIR RMC No. 65-2012,* such dues, fees, and charges do not arise from transactions involving sale of goods or the performance of services and the collection thereof cannot be considered as sale of services for fee or consideration.

There is no doubt that, as a duly constituted local government unit, Taguig City has the legal authority to impose LBT, among other taxes, fees, and charges, through a valid revenue ordinance passed by its *Sangguniang Panlungsod* in accordance with the Constitution and the LGC. But that is beside the point. The question here is whether SCC as a condominium corporation actually engaged in business to be subject to TCG's power to impose local business tax. To reiterate, SCC is not considered as engaged in trade or business by reason of its statutory nature as a condominium corporation. There is also no clear and convincing proof duly submitted in the present case that SCC was actually engaged in business for it to be covered by the exception

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[57] *Civil Service Commission v. Moralde*, G.R. No. 211077, August 15, 2018; *Manila International Airport Authority v. Ding Velayo Sports Center, Inc.*, G.R. No. 161718, December 14, 2011, 662 SCRA 399; *Kalalo v. Luz*, G.R. No. L-27782, July 31, 1970, 34 SCRA 337.
[58] *Id.*
[59] RTC Decision, p. 2; Par. 14, Complaint, RTC Docket Vol. I, p. 9; Par. 1.6, Answer, RTC Docket Vol. II, p. 3.

identified by the Supreme Court in *Yamane*. This is the underlying reason why SCC is not subject to LBT.

SCC is not estopped from claiming that it is not engaged in business

According to TCG et. al., SCC's claim that it is not engaged in business is belied by the fact that it consistently secured business permit [from] them in the previous years.[60] Hence, TCG et. al. posit that SCC is estopped from claiming that it is not engaged in business.[61]

As a counterpoint, SCC submits that its act of securing business permits in previous years does not *ipso facto* make it an entity engaged in business.[62] It avers that it only applied and paid for business permits in previous years only to be allowed to operate in Taguig City.[63]

TCG et. al.'s argument is specious.

The doctrine of estoppel *in pais* was expounded in *Shopper's Paradise Realty & Development Corporation v. Roque,*[64] as follows:

> "The essential elements of estoppel *in pais*, in relation to the party sought to be estopped, are: 1) a clear conduct amounting to false representation or concealment of material facts or, at least, calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; 2) an intent or, at least, an expectation, that this conduct shall influence, or be acted upon by, the other party; and 3) the knowledge, actual or constructive, by him of the real facts. With respect to the party claiming the estoppel, the conditions he must satisfy are: 1) lack of knowledge or of the means of knowledge of the truth as to the facts in question; 2) reliance, in good faith, upon the conduct or statements of the party to be estopped; and 3) action or inaction based thereon of such character as to

[60] CTA AC No. 229 Docket, p. 34.
[61] *Id.*
[62] *Id.*, p. 118.
[63] *Id.*
[64] G.R. No. 148775, January 13, 2004, 419 SCRA 100.

change his position or status calculated to cause him injury or prejudice." *(Citations omitted)*

This Court is of the view that the doctrine of estoppel *in pais* finds no application to the present case. Notably, TCG et. al. failed to convincingly prove that all of the elements thereof are present in this case. As aptly held in *Kalalo v. Luz*:[65]

> "Estoppel cannot be sustained by mere argument or doubtful inference; it must be clearly proved in all its essential elements by clear, convincing and satisfactory evidence. No party shall be precluded from making out his case according to its truth unless by force of some positive principle of law, and, consequently, estoppel *in pais* must be applied strictly and should not be enforced unless substantiated in every particular." *(Citations omitted)*

At any rate, this Court does not consider SCC as having made any false representation or concealment of material facts when it applied for business permits and paid business taxes in the previous years. In *Ramiro v. Graño*,[66] the Supreme Court held that "[n]o estoppel arises where the representation or conduct of the party sought to be estopped is due to ignorance founded upon an innocent mistake x x x" and that the "acts and declarations of a party based upon an innocent mistake as to his legal rights will not estop him to assert the same, especially where every fact known to the party sought to be estopped is equally well known to the party setting up the estoppel". Moreover, there is no proof that TCG et. al. have relied on the conduct of SCC and that they were misled by such conduct to their own injury or prejudice.

SCC need not prove its exemption from local business tax and business plate/sticker fee

TCG et. al. also submit that SCC's claim of exemption from the imposition of the LBT and business plate/sticker fee is bereft of legal basis.[67] TCG et. al. argue that a tax exemption can never arise by mere

[65] G.R. No. L-27782, July 31, 1970, 34 SCRA 346, 347.
[66] G.R. No. 32296, March 31, 1930, 54 Phil. 750.
[67] CTA AC No. 229 Docket, pp. 40-44.

implication and any doubt regarding such exemption must be resolved against the taxpayer-claimant.[68]

On the other hand, SCC posits that it need not prove its exemption from the imposition of LBT and business plate/sticker fee.[69] In fact, it should be TCG et. al. that must prove that SCC is clearly subject to the tax being levied.[70]

TCG et. al.'s position is untenable.

Condominium corporations are not subject to the imposition of LBT as well as business plate/sticker fee, not because they are exempt therefrom, but because they are not considered engaged in trade or business.

Not being subject to the imposition of a particular form of tax is totally different from the status of being tax-exempt. Thus, it is inaccurate to state that SCC is claiming exemption from LBT when the latter actually insists that it is not subject to the said tax imposition. On this point, the ruling in *Commissioner of Internal Revenue v. SM Prime Holdings, Inc.*[71] is apropos:

> "Moreover, contrary to the view of petitioner, **respondents need not prove their entitlement to an exemption from the coverage of VAT. <u>The rule that tax exemptions should be construed strictly against the taxpayer presupposes that the taxpayer is clearly subject to the tax being levied against him. The reason is obvious: it is both illogical and impractical to determine who are exempted without first determining who are covered by the provision.</u> Thus, unless a statute imposes a tax clearly, expressly and unambiguously, what applies is the equally well-settled rule that the imposition of a tax cannot be presumed. In fact, in case of doubt, tax laws must be construed strictly against the government and in favor of the taxpayer**." *(Emphasis and underscoring supplied; Citations omitted)*

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[68] *Id.*
[69] *Id.*, pp. 127-129.
[70] *Id.*
[71] G.R. No. 183505, February 26, 2010, 613 SCRA 800 citing *Commissioner of Internal Revenue v. The Phil. American Accident Insurance Company, Inc.*, 493 Phil. 785, 793 (2005).

On the matter of legal interest, attorney's fees, litigation expenses and costs of suit

TCG et. al. likewise argue that the RTC committed reversible error in finding them liable for legal interest on the amount ordered to be refunded to SCC at the rate of 6% per annum commencing on the date of the filing of the Complaint until the said amount is fully paid.[72] TCG et. al. also contend that the RTC committed reversible error in finding them liable for attorney's fees plus litigation expenses and costs of suit.[73]

SCC, however, insists that TCG et. al. are liable to pay legal interest as well as attorney's fees, litigation expenses and costs of suit.[74]

This Court is of the view that SCC cannot be awarded with legal interest because the taxes and fees were not shown to have been arbitrarily collected. Basic is the rule that interest may be awarded only when the collection of tax sought to be refunded was attended with arbitrariness.[75] Besides, in the absence of a statutory provision clearly or expressly directing or authorizing payment of interest on the amount to be refunded to taxpayer, the Government cannot be required to pay interest.[76]

This Court also finds that the award of attorney's fees should be deleted for lack of sufficient factual and legal bases.

In *Philippine National Construction Corporation v. APAC Marketing Corporation*,[77] the Supreme Court exhaustively explained the prevailing rules governing the award of attorney's fees:

> "Article 2208 of the New Civil Code of the Philippines states the policy that should guide the courts when awarding attorney's fees to a litigant. As a general rule, the

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[72] CTA AC No. 229 Docket, pp. 44-46.
[73] *Id.*, pp. 46-47.
[74] *Id.*, pp. 130-131.
[75] *Ormoc Sugar Company, Inc. v. The Treasurer of Ormoc City et. al.*, G.R. No. L-23794, February 17, 1968, 22 SCRA 607.
[76] *Atlas Fertilizer Corporation v. Commissioner of Internal Revenue*, G.R. Nos. L-26686 & L-26698, October 30, 1980, 100 SCRA 568 citing *Collector of Internal Revenue v. Binalbagan Estate, Inc.*, 13 SCRA 10; *Collector of Internal Revenue v. Fisher*, 1 SCRA 113; *Collector of Internal Revenue v. Sweeney*, 106 Phil. 65.
[77] G.R. No. 190957, June 5, 2013, 697 SCRA 447-450.

parties may stipulate the recovery of attorney's fees. In the absence on such stipulation, this article restrictively enumerates the instances when these fees may be recovered, to wit:

> Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
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> (1) When exemplary damages are awarded;
>
> (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
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> (3) In criminal cases of malicious prosecution against the plaintiff;
>
> (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
>
> (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
>
> (6) In actions for legal support;
>
> (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
>
> (8) In actions for indemnity under workmen's compensation and employer's liability laws;
>
> (9) In a separate civil action to recover civil liability arising from a crime;
>
> (10) When at least double judicial costs are awarded;
>
> (11) In any other case where the court deems it just and equitable that attorney's

fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

In *ABS-CBN Broadcasting Corp. v. CA*, this Court had the occasion to expound on the policy behind the grant of attorney's fees as actual or compensatory damages:

(T)he law is clear that in the absence of stipulation, attorney's fees may be recovered as actual or compensatory damages under any of the circumstances provided for in Article 2208 of the Civil Code.

The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification. **Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.**

In *Benedicto v. Villaflores*, we explained the reason behind the need for the courts to arrive upon an actual finding to serve as basis for a grant of attorney's fees, considering the dual concept of these fees as ordinary and extraordinary:

It is settled that the award of attorney's fees is the exception rather than the general rule; counsel's fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. Attorney's fees, as part of damages, are not necessarily equated to the amount paid by a

> litigant to a lawyer. In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter; while in its extraordinary concept, they may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party. Attorney's fees as part of damages are awarded only in the instances specified in Article 2208 of the Civil Code. **As such, it is necessary for the court to make findings of fact and law that would bring the case within the ambit of these enumerated instances to justify the grant of such award, and in all cases it must be reasonable.**
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> x x x x x x x x x
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> **We have consistently held that an award of attorney's fees under Article 2208 demands factual, legal, and equitable justification to avoid speculation and conjecture surrounding the grant thereof. Due to the special nature of the award of attorney's fees, a rigid standard is imposed on the courts before these fees could be granted.** Hence, it is imperative that they clearly and distinctly set forth in their decisions the basis for the award thereof. It is not enough that they merely state the amount of the grant in the dispositive portion of their decisions. It bears reiteration that the award of attorney's fees is an exception rather than the general rule; thus, there must be compelling legal reason to bring the case within the exceptions provided under Article 2208 of the Civil Code to justify the award." *(Emphasis supplied)*

In the Assailed Decision, the lower court stated its reason for awarding attorney's fees as follows:

> "Finally, with respect to the claim for attorney's fees, this court is resistant in granting plaintiff's prayer for an award of Php1,000,000.00 attorney's fees because plaintiff failed to clearly substantiate the details of its entitlement to the amount sought. However, since it is undisputed that plaintiff was compelled to litigate, a fair and reasonable

amount of attorney's fees in the amount of Fifty Thousand (Php50,000.00) Pesos is awarded to the plaintiff."

Guided by the controlling principles quoted above, this Court finds that the Assailed Decision failed to state the factual, legal, and equitable justification for the award of attorney's fees. Even assuming that SCC was compelled to litigate as stated by the lower court, there is still no sufficient showing that the opposing parties have acted in bad faith in their persistence in the present case other than an erroneous conviction of the righteousness of their cause.[78] By the same token, this Court deletes the award for litigation expenses not only because there was no statement of justification therefor in the body of the Assailed Decision but also because there was no evidence on record to support the same.

As regards the award of costs of suit, Section 1, Rule 142 of the Rules of Court provides:

> "Section 1. *Cost ordinarily follow results of suit.* — Unless otherwise provided in these rules, cost shall be allowed to the prevailing party as a matter of course, but the court shall have power, for special reasons, to adjudge that either party shall pay the costs of an action, or that the same be divided, as may be equitable. No costs shall be allowed against the Republic of the Philippines unless otherwise provided by law."

In *Favis v. Municipality of Sabangan, et. al.*,[79] the Supreme Court clarified that while no costs shall be allowed against the Government of the Philippines where it is the unsuccessful party, the general rule that costs are imposed upon the unsuccessful party applies to public corporations which sue and can be sued and municipal corporations.

The Supreme Court explained the concept of costs of suit in *Maglana Rice and Corn Mill, Inc. v. Tan*,[80] in the following manner: *gr*

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[78] *The President of the Church of Jesus Christ of Latter Day Saints v. BTL Construction Corporation*, G.R. No. 176439, January 15, 2014, 713 SCRA 455, 472-473; *Oceaneering Contractors (Phil), Inc. v. Barretto*, *supra* note 27 at 610-611; *ABS-CBN Broadcasting Corporation v. Court of Appeals*, G.R. No. 128690, January 21, 1999, 301 SCRA 572, 601-602.

[79] G.R. No. L-26522, February 27, 1969, 27 SCRA 96 citing *Palanca v. The City of Manila*, G.R. No. 15819, October 27, 1920, 41 Phil. 125, 133.

[80] G.R. No. 159051, September 21, 2011, 658 SCRA 67-68 citing 20 C.J.S., *Costs*, §2.

> "Costs are certain allowances authorized by statute or court rule to reimburse the successful party for expenses incurred in prosecuting or defending an action or special proceedings. They are in the nature of incidental damages allowed to indemnify a party against the expense of successfully asserting his rights in court. The theory on which they are allowed to a plaintiff is that the default of defendant made it necessary to sue him, and to a defendant, that plaintiff sued him without cause.
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> xxx
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> In their origin, costs were given rather as a punishment of the defeated party for causing the litigation than as a recompense to the successful party for the expenses to which he had been subjected. At the present time, the latter theory generally obtains in the legislation with regard to it; but under some statutes, the law of costs is regarded as penal, the right to recover costs being given to the successful party against the unsuccessful party as a penalty for presenting in court as suit or defense that which is without merit, as where the litigant has pleaded frivolous or false matters.
>
> xxx
>
> Costs are a mere incident to, and are in no sense the subject of, the litigation; and while they are incident to all actions they are nevertheless in their nature a mere incident to the judgment to which they attach, especially in cases relating to motions and orders.
>
> The right to costs, although ancillary to the judgment, is a substantive right and not a mere matter of procedure; although it has been held that costs alone cannot furnish the basis for substantive judgment."

Considering TCG et. al.'s refusal to grant SCC's claim for refund, the latter was constrained to file a Complaint before Taguig City RTC for the recovery of the LBT and environmental impact fees (EIF) paid to the former. In light of Section 1, Rule 142 of the Rules of Court, the lower court properly ordered TCG et. al. to pay the costs of suit. Je

CTA AC No. 230

In its Petition, SCC argues that the EIF imposed under Taguig City Ordinance No. 116, series of 2008 (the "Assailed Ordinance"), is imposable only on business entities.[81] To support this position, SCC cited the various portions of the Assailed Ordinance which allegedly show that it is the intent of the city's legislative body to cover only those entities engaged in business within Taguig City.

SCC likewise posits that the EIF under the Assailed Ordinance is unjust, excessive, oppressive and confiscatory and violative of the equal protection clause of the Constitution.[82]

TCG et. al., in their Comment, maintain that the Assailed Ordinance specifically renders SCC liable for the EIF.[83] They reiterate their position that SCC is engaged in the business of selling services as the membership dues or fees paid by its members are compensation for the services provided to them.[84] They also claim that RMC No. 65-2012 is instructive of the nature of SCC's operation.[85] TCG et. al. likewise contend that the EIF was imposed for a regulatory purpose and not for the privilege of engaging in business but for generating solid wastes within Taguig City.[86]

With respect to the argument that the EIF is unjust, excessive, oppressive and confiscatory and violative of the equal protection clause of the Constitution, TCG et. al. assert that the validity or constitutionality of the Assailed Ordinance is not susceptible to indirect or collateral attack.[87] They also state that the presumption of validity of the Assailed Ordinance stands inasmuch as SCC failed to prove its allegation that the same is unjust, excessive, oppressive or confiscatory and violative of the equal protection clause of the Constitution.[88]

The Petition is partly meritorious.

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[81] CTA AC No. 230 Docket, pp. 14-20.
[82] *Id.*, pp. 20-29.
[83] *Id.*, pp. 299-304.
[84] *Id.*, pp. 304-317.
[85] *Id.*
[86] *Id.*, pp. 317-319.
[87] *Id.*, pp. 319-322.
[88] *Id.*, pp. 322-326.

The environmental impact fee is imposable only on entities engaged in business

The crux of SCC's Petition for Review is whether it should be held liable for the EIF imposed under the Assailed Ordinance. Central to the resolution of this controversy is the proper reading and application of the provisions of the Assailed Ordinance. In resolving this particular issue, this Court is mindful of the principle laid down by the Supreme Court in *Philippine International Trading Corporation v. Commission on Audit*,[89] viz.:

> "It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law. The statute's clauses and phrases must not, consequently, be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Consistent with the fundamentals of statutory construction, all the words in the statute must be taken into consideration in order to ascertain its meaning."

In addition, the following jurisprudential precept as ordained by the Supreme Court in *Manila Race Horse Trainers Association, Inc. et. al. v. Dela Fuente*,[90] is equally relevant:

> "The spirit, rather than the letter, of an ordinance determines the construction thereof, and the court looks less to its words and more to the context, subject matter, consequence and effect. Accordingly, what is within the spirit is within the ordinance although it is not within the letter thereof, while that which is in the letter, although not within the spirit, is not within the ordinance."

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[89] G.R. No. 183517, June 22, 2010, 621 SCRA 469.
[90] G. R. No. L-2947, January 10, 1951, 88 Phil. 63 ("*Manila Race Horse*").

After meticulous reading of the Assailed Ordinance, this Court agrees with the conclusion reached by the lower court that the EIF is in the nature of a regulatory fee rather than a tax given that the imposition thereof is in line with the express policy of the local government of Taguig City "to prescribe regulations on entities doing business within its territorial jurisdiction" and also for purposes of "hauling and management of solid waste generated by the citizens and businesses of the City".[91] On the other hand, there is nothing in the Assailed Ordinance which suggest that the imposition of the EIF is essentially for revenue-raising purposes.

The foregoing conclusion is consistent with the Supreme Court's ruling in *City of Cagayan De Oro v. Cagayan Electric & Light Co., Inc. (CEPALCO)*,[92] wherein it was explained that:

> The term 'taxes' has been defined by case law as 'the enforced proportional contributions from persons and property levied by the state for the support of government and for all public needs.' While, under the Local Government Code, a 'fee' is defined as 'any charge fixed by law or ordinance for the regulation or inspection of a business or activity.'
>
> From the foregoing jurisprudential and statutory definitions, it can be gleaned that **the purpose of an imposition will determine its nature as either a tax or a fee. If the purpose is primarily revenue, or if revenue is at least one of the real and substantial purposes, then the exaction is properly classified as an exercise of the power to tax. On the other hand, if the purpose is primarily to regulate, then it is deemed an exercise of police power in the form of a fee, even though revenue is incidentally generated. Stated otherwise, if generation of revenue is the primary purpose, the imposition is a tax but, if regulation is the primary purpose, the imposition is properly categorized as a regulatory fee.**"

Nevertheless, this Court takes exception to the lower court's finding that SCC is subject to the EIF. Truth be told, this Court concurs with SCC's position that it is, indeed, the intent of the legislative body

[91] Section 2, Ordinance No. 116, series of 2008.
[92] G.R. No. 224825, October 17, 2018 ("*CEPALCO*").

of Taguig City to impose the EIF prescribed under the Assailed Ordinance only to those entities engaged in business within Taguig City. Considering this Court's earlier pronouncement that SCC is not engaged in business, SCC is, therefore, not subject to the EIF imposed under the Assailed Ordinance.

The legislative intent to impose the EIF only to those entities engaged in business within Taguig City can be gleaned from the text of the Assailed Ordinance itself. To begin with, the Whereas Clauses of the Assailed Ordinance spell out the context for the passage of the said piece of local legislation. These Whereas Clauses, more particularly those cited below, reasonably indicate that the Assailed Ordinance aims to cover business entities only:

> "WHEREAS, after extensive discussion intended to further rationalize the fee structure of the City of Taguig, City Ordinance No. 111, Series of 2007 requires modification and additional classifications of **business** to respond to the changes in the economic, social, and political climate in the City;
>
> x x x x x x x x xx
>
> WHEREAS, there is a need to add sub-sections and prescribed rates pertaining to **establishments** that were previously not included in the Taguig Revenue Code to support and sustain the demands intrinsic to and called for by the City's continuing growth and progress;" *(Emphasis supplied)*

In enacting the Assailed Ordinance, the legislative body of Taguig City had expressly intended to "further rationalize the fee structure" of the City through the modification of City Ordinance No. 111, series of 2007, the "additional classifications of business", and the prescription of rates for those establishments[93] that were previously not included in Taguig Revenue Code.

Going deeper into the provisions of the Assailed Ordinance, this Court finds that Sections 2 and 4 thereof are even stronger

[93] It may not be amiss to point out that Ordinance No. 111, series of 2007, prior to its amendment by Ordinance No. 116, series of 2008, provides that "[a]n environmental fee is imposed on all **business establishments** as defined to compensate the negative social or environmental cost which will eventually be bear (sic) by the City of Taguig".

manifestations of the legislative intent to impose the EIF only to entities engaged in business within Taguig City.

Section 2 expresses the declaration of policy of the Assailed Ordinance. The provision states:

> "***Section 2. DECLARATION OF POLICY*** – It is hereby declared the policy of the local government of Taguig **to prescribe regulations on <u>entities doing business within its territorial jurisdiction</u>** not only to uphold the interests of the City Government and its people, but to ensure as well that the private sector complements the efforts of this local government to make the city a destination for investors, and that they are not mere investors but also partners in the progress and development of this City. It is also hereby declared that the local government of Taguig shall be solely responsible and accountable for the hauling and management of solid waste generated by the citizens and businesses of the City." *(Emphasis and underscoring supplied)*

Moreover, Section 4 lays down the guidelines to be observed in the imposition of the EIF. The relevant portion of this provision reads:

> ***Section 4. GUIDELINES*** – **<u>The fees to be paid by business</u>** as prescribed in this ordinance are to be based on the total area occupied as used in the conduct of the operations of each, whether the premises are owned or leased. x x x" *(Emphasis and underscoring supplied)*

The true meaning of the highlighted clauses in the above provisions as well as of the words "business" and "establishments" in the Whereas Clauses becomes evident if one takes into account the technical definition of the term "business" as provided by the LGC and Taguig Revenue Code. Note that both the LGC and the Taguig Revenue Code identically define the term "business" as "trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit".[94] *gr*

[94] Sec. 131(d), Chapter 1, Title One, Book II, LGC; Sec. 74(6), Chapter 11, Title III, Taguig Revenue Code, Exhibit "S", RTC Records Vol. I, p. 321.

In light of the above disquisition, the clause "companies operating within the territorial jurisdiction of the City of Taguig" as well as the term "Residential Buildings" both found in Section 3 of the Assailed Ordinance cannot be loosely interpreted as referring to business and non-business entities alike but must be construed as strictly pertaining to business entities only, in consonance with the other parts of the Assailed Ordinance.

As regards the reference to "residential condominiums" and "condominium corporation" in Section 4 of the Assailed Ordinance, the inclusion thereof may be reasonably attributed to the mistaken notion that condominium corporations are entities engaged in business which is not the case, as fully discussed above. Considering that their inclusion in Section 4 is inconsistent with the spirit of the Assailed Ordinance, following *Manila Race Horse* dictum, they should be deemed not written therein.

The requisites for the judicial review of the validity and/or constitutionality of Ordinance No. 116, series of 2008 were not established

In the case of *Samahan Ng Mga Progresibong Kabataan (SPARK), et. al. v. Quezon City, et. al.,*[95] the Supreme Court succinctly enunciated the requisites for the exercise of the power of judicial review involving the constitutionality or validity of a law or governmental act as follows:

> The prevailing rule in constitutional litigation is that no question involving the constitutionality or validity of a law or governmental act may be heard and decided by the Court unless there is compliance with the legal requisites for judicial inquiry, namely: (a) there must be an actual case or controversy calling for the exercise of judicial power; (b) the person challenging the act must have the standing to question the validity of the subject act or issuance; (c) the question of constitutionality must be raised at the earliest opportunity; and (d) the issue of constitutionality must be the very *lis mota* of the case."

[95] G.R. No. 225442, August 8, 2017, 835 SCRA 384.

Corollary thereto, courts must also be cognizant of the presumption of constitutionality and validity of laws and ordinances when confronted with such questions in deciding cases. As aptly stated by the Supreme Court in *CEPALCO*, to wit:[96]

> "The presumption of validity is a corollary of the presumption of constitutionality, a legal theory of common-law origin developed by courts to deal with cases challenging the constitutionality of statutes.
>
> The presumption of constitutionality, in its most basic sense, only means that courts, in passing upon the validity of a law, will afford some deference to the statute and charge the party assailing it with the burden of showing that the act is incompatible with the constitution. The doctrine comes into operation when a party comes to court praying that a law be set aside for being unconstitutional. **In effect, it places a heavy burden on the act's assailant to prove invalidity beyond reasonable doubt; it commands the clearest showing of a constitutional infraction. Thus, before a law may be struck down as unconstitutional, courts must be certain that there exists a clear and unequivocal breach of the constitution, and not one that is speculative or argumentative. To doubt, it has been said, is to sustain.**
>
> The United States Supreme Court expressed the rationale for the presumption in *Ogden v. Saunders*, thus: 'it is but a decent respect due to the wisdom, the integrity, and the patriotism of the legislative body by which any law is passed to presume in favor of its validity x x x.'
>
> **For the same reason, the presumption extends to legislative acts of local governments, as well. Thus, ordinances too are presumed constitutional, and, in addition, they are also presumed consistent with the law. This is necessary because one of the requisites of a valid ordinance is that it does not contravene any statute. An ordinance that is incompatible with the law is *ultra vires* and hence null and void. To this end, when an action assailing an ordinance is brought before a court, the**

[96] G.R. No. 224825, October 17, 2018.

> **judge must, as a rule, presume that the ordinance is valid and therefore charge the plaintiff with the burden of showing otherwise.** In *U.S. v. Salaveria*, the Court, speaking through Justice Malcolm, laid down the basis for the presumption in this wise:
>
> > The presumption is all in favor of validity x x x. The action of the elected representatives of the people cannot be lightly set aside. The councilors must, in the very nature of things, be familiar with the necessities of their particular municipality and with all the facts and circumstances which surround the subject and necessitate action. The local legislative body, by enacting the ordinance, has in effect given notice that the regulations are essential to the well-being of the people x x x. *(Emphasis supplied and citations omitted)*

After judicious analysis of the arguments, the case records, and other relevant jurisprudence, this Court finds that the requisites of judicial review, particularly items (c) and (d) enumerated above, were not established in the present case. In other words, SCC failed to raise the question of constitutionality at the earliest opportunity and that the issue of constitutionality is not the *lis mota* of the present case.

In cases where the constitutionality of statutes or ordinances are directly put in issue, the general rule is that the question of constitutionality must be raised at the earliest opportunity, so that if not raised by the pleadings, ordinarily it may not be raised at the trial, and if not raised in the trial court, it will not be considered on appeal.[97] By way of exception, issues of constitutionality may be raised in criminal cases for the first time at any stage of the proceedings, either in the trial court or on appeal.[98] In civil cases, the courts may pass upon constitutional issues, though raised for the first time on appeal, if it appears that a determination of the question is necessary to a decision of the case.[99] None of these exceptions apply to the present case. Inasmuch as SCC failed to raise the constitutional issues in the proceedings before the lower court, it may not be allowed to raise the same before this Court especially since it does not appear that the resolution of the said question is necessary to decide the present case.

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[97] *People v. Vera,* G.R. No. L-45685, November 16, 1937, 65 Phil. 88.
[98] *Id.*
[99] *Id.*

Under the doctrine of constitutional avoidance, it was held that "if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter".[100] As categorically held by the Supreme Court *En Banc* in *Intia, Jr. v. The Commission on Audit*,[101] to wit:

> "It is a well-established rule that a court should not pass upon a constitutional question and decide a law to be unconstitutional or invalid, unless such question is raised by the parties and that when it is raised, if the record also presents some other ground upon which the court may raise its judgment, that course will be adopted and the constitutional question will be left for consideration until such question will be unavoidable."

In view of the presence of other legal grounds upon which the present case may be disposed of, there is no need to pass upon the constitutional issues raised.

With respect to the contention that the imposition of the EIF is unjust, excessive, oppressive and confiscatory, this Court finds that SCC failed to present any evidence regarding the actual cost of regulation, inspection, and hauling and disposal of the solid waste by the city government. Without such evidence, there is simply no way to determine whether the amount of the fees imposed is disproportionately in excess of the actual cost of regulation and waste management within Taguig City. Accordingly, SCC failed to discharge its burden of proving the invalidity of the Assailed Ordinance. Therefore, the presumption of validity of the Assailed Ordinance shall prevail.

WHEREFORE, the Petition for Partial Review filed by Taguig City Government et. al. docketed as CTA AC No. 229 as well as the Petition for Review filed by Serendra Condominium Corporation docketed as CTA AC No. 230 are both **PARTIALLY GRANTED**. Accordingly, the Decision dated March 18, 2019 and the Order dated August 1, 2019 of the Regional Trial Court, Branch 153, Taguig City in Civil Case No. 74669 are **MODIFIED**.

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[100] *Ashwander v. Tennessee Valley Authority*, 297 US 288, 346-347, 56 S. Ct. 466, 483, February 17, 1936, per Brandeis, *J.*

[101] G.R. No. 131529, April 30, 1999, 306 SCRA 609-610 citing *Sotto v. Commission on Elections*, 76 Phil. 516 (1946). See also *Moldex Realty, Inc. v. Housing and Land Use Regulatory Board, et. al.*, G.R. No. 149719, June 21, 2007, 525 SCRA 206-207; *Manila Electric Company v. Atilano, et. al.*, G.R. No. 166758, June 27, 2012, 675 SCRA 126; *Laurel v. Garcia*, G.R. No. 92013, July 25, 1990, 187 SCRA 813.

Taguig City Government et. al. are **ORDERED TO REFUND or ISSUE TAX CREDIT CERTIFICATE** in favor of Serendra Condominium Corporation the amount of **₱5,701,026.72** representing erroneously or illegally paid local business tax, business plate/sticker fee and environmental impact fee for the year 2013. Cost of suit against Taguig City Government, et. al.

SO ORDERED.

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

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice