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

BELENE G. YUCOCO,
Complainant-Appellee,

- versus -

SEC En Banc Case No. 09-16-410
(SEC Case No. 15-3050)
Promulgated: 02 March 2023

ORIENT PEARL RESOURCES WORLDWIDE, INC., ORIENT PEARL MINING CORPORATION, SPOUSES REYNALDO S. GALENZOGA and SHIELA THERESE M. GALENZOGA, CONSTANTE T. TAPURO, MICHAEL CHERUBIM D. TAPURO, DORA ALMADRO LEGITA, RUBEN L. ALMADRO, and EDWIN R. MASBANG,
Respondents-Appellants.
x - x

DECISION

Before this Commission is the *Notice of Appeal (Re: Order dated 16 August 2016) with Attached Memorandum of Appeal* dated 13 September 2016 (the "Appeal") filed by Respondents-Appellants Spouses Reynaldo S. Galenzoga (Mr. Galenzoga) and Sheila Therese M. Galenzoga (Ms. Galenzoga) (collectively "Spouses Galenzoga") praying that the Commission reverses and sets aside the Order dated 16 August 2016 issued by the Enforcement and Investor Protection Department (EIPD) [the "Assailed Order"], the dispositive portion of which, in part, reads:

> "PREMISES CONSIDERED, Respondents REY GALENZOGA and SHIELA GALENZOGA are hereby found liable for violating Section that Spouses Galenzoga violated Section 26 of the Securities Regulation Code and are each ORDERED to pay a fine of ONE MILLION (P1,000,000.00) PESOS in accordance with Sec. 54 of the RCC within FIFTEEN (15) DAYS from receipt hereof."

THE PARTIES

Complainant-Appellee Belene G. Yucoco (Ms. Yucoco) is of legal age and represented by her counsel, A tty. Margarita C. Feliciano, with office address at No. 51 Marvex Drive, A. Bonifacio Ave., Balintawak, Quezon City.

Respondent-Appellant Orient Pearl Resources Worldwide, Inc. (Orient Pearl Resources) is a corporation organized and existing under the laws of the Republic of the Philippines, having been issued a Certificate of Incorporation bearing no. CS200620107 on 9 January 2007. Its business address is at The One Executive Office Bldg., #5 West Avenue, Quezon City.

Respondent-Appellant Orient Pearl Mining Corporation (Orient Pearl Mining) is a corporation organized and existing under the laws of the Republic of the Philippines, having been issued a Certificate of Incorporation bearing no. CS200814274 on 10 September 2008. Its business address is at 1903-B Tektite West Tower, PSE Centre, Ortigas, Pasig City.

Respondents-Appellants Spouses Galenzoga are both of legal age and represented by their counsel, Mendoza Antero & Associates with office address at U-2310 Prestige Tower Condominium, F. Ortigas Jr. Road, Ortigas Center, Pasig City.

Respondents-Appellants Constante T. Tapuro and Michael Cherubim D. Tapuro (Respondents-Appellants Tapuro) are both of legal and represented by their counsel, Salumbides Ugalingan and Reysio-Cruz with office address at 4/F, The West Wing Bldg., 107 West Avenue, Quezon City.

Respondent-Appellant Dora Almadro Legita is of legal age, and with address at Block 79, Lot 21, Flores de Mayo Street, Lagro Subdivision, Quezon City-

Respondents-Appellants Ruben L. Almadro and Edwin R. Masbang are both of legal age and with address at No. 41-A, Kadir Point Condominium, Bohol Avenue, Quezon City.

x--x

THE RELEVANT FACTS

The legal battle between Appellants and Appellee dates back to the year 2008 when Mr. Galenzoga started dealing with Ms. Yucoco, after they were introduced to each other by Ms. Galenzoga.

Mr. Galenzoga had several conversations with Ms. Yucoco on the company that the former will establish for the purpose of carrying out the trading of minerals and other mineral products, and his need for money relative thereto.[1]

On 10 September 2008, Orient Pearl Mining was incorporated for the following purposes, to wit:

> "To engage in, operate, conduct, maintain, and carry on the business of mining exploration, extraction, quarrying, development, and management of various mineral resources within and outside the Philippines, for purposes of production and marketing thereof; to construct and operate plant and mill machineries necessary to convert such minerals into marketable products; to enter into contract and/or partnership with Philippines government on the Mineral Production Sharing Agreement (MPSA), Small Scale Mining Permit (SSMP) or any other applicable agreements as provided by law, and to acquire all forms of mining rights from other parties, and to undertake the operation and management thereof, as principal, contractor, or in a joint venture capacity, as may be permitted by law, and any other businesses which may be usefully carried on in connection with such business, and to acquire and undertake the whole or any part of the business, property, and liabilities of any person or company carrying on business as such contractors or agents, or any other businesses which may be usefully carried on therewith."[2]

The uncertainty that the capitalization of Orient Pearl Mining will be sufficient to sustain the operation of the corporation prompted Mr. Galenzoga to allegedly borrow money from Ms. Yucoco in the amount of Pesos: One Million (P1,000,000.00), with an interest of 7.5% per month, and subsequently, Pesos: Two Million (P2,000,000.00) with an interest of

---

[1] *Joint Counter-Affidavit* dated 11 March 2015 of Reynaldo S. Galenzoga and Shiela Therese M. Galenzoga. Pars. 5-7. See also *Memorandum of Appeal* (Annex "B")
[2] *Complaint.* Annex "F" (Article SECOND of the Articles of Incorporation of Orient Pearl Mining)

5% per month, for which Promissory Notes dated 11 September 2008 and 18 October 2008, respectively, were issued.[3]

On 28 October 2008, Orient Pearl Mining obtained the required permits for its operation, however, it was not able to extract a substantial amount of high-grade chromite at the site which allegedly led to the cancellation of its operation.[4]

In 2009, Orient Pearl Mining was allegedly able to find another mining site in Brgy Balocbahan, Bayog, Zamboanga del Sur, and bought the rights of Peng Cheng Metallic Resources Corporation (PCMRC) over the same. To help defray the operating expenses, and considering that the funds of the corporation were already depleted, Mr. Galenzoga procured another loan from Ms. Yucoco in the amount of Two Million (P2,000,000.00)[5], for which another Promissory Note covering the principal amount and a monthly interest of 5% was issued to the latter.[6]

The mining operation in Brgy Balocbahan, Bayog, Zamboanga del Sur enabled Orient Pearl Mining to extract iron ores. However, the sharp decline in the world prices of iron ore and other minerals allegedly compelled Orient Pearl Mining to altogether cease operations because PCMRC suspended payment for the project.[7] Thus, the Spouses Galenzoga were unable to pay their obligations to Ms. Yucoco.

On 9 October 2014, Ms. Yucoco filed her *Verified Complaint* before the EIPD therein praying for (a) the issuance of a Cease and Desist Order restraining the Spouses Galenzoga and their agents, employees, and persons working for them, from engaging in the sale/offer of securities, and (b) the filing of the appropriate criminal complaints against the Spouses Galenzoga before the Department of Justice for violation of relevant provisions of the Securities Regulation Code (SRC). In her Verified Complaint, Ms. Yucoco maintained that the Spouses Galenzoga, through Orient Pearl Mining, were engaged in the unauthorized sale/offer of securities as defined in the SRC, in the form the promissory notes and checks that they issued which assumed the character of "evidences of indebtedness".[8] In support thereof, Ms. Yucoco presented in evidence the Certification dated 29 September 2014 issued by the

---

[3] *Joint Counter-Affidavit* dated 11 March 2015 of Reynaldo S. Galenzoga and Shiela Therese M. Galenzoga. Pars. 7 and 8. See also, *Memorandum of Appeal* (Sub-Annexes "J" and "K" of Annex "B")
[4] *Ibid.* Pars. 32 and 33
[5] *Ibid.* Pars. 35 to 37
[6] *Memorandum of Appeal.* Sub-Annex "L" of Annex "B"
[7] *Joint Counter-Affidavit.* Pars. 44 and 45
[8] *Verified Complaint.* Pars. 24 and 25

Commission which stated that Orient Pearl Resources and Orient Pearl Mining are not registered issuers of securities.[9]

In their *Joint Counter-Affidavit* dated 11 March 2015, Spouses Galenzoga denied Ms. Yucoco's allegation that they were selling securities, and maintained that the transaction that Mr. Galenzoga and Ms. Yucoco entered was a simple loan; thus, the checks and the promissory notes that she issued cannot be considered "securities" under the SRC.[10] The Spouses Galenzoga also applied the Howey Test and argued that loan transactions entered into by and between Mr. Galenzoga and Ms. Yucoco are not investment contracts since the elements are not present i.e. there was no investment in money, and the payment of the loan amount and interests is not contingent on the success of the business.[11]

During the clarificatory conference that was conducted by the EIPD on 18 November 2014, Ms. Yucoco, through counsel, manifested that she has no brochure or document(s) showing that respondents were publicly selling or offering securities or soliciting investments. What Ms. Yucoco presented were the documents used by the Spouses Galenzoga which allegedly convinced her to invest her money with them.[12]

On 16 August 2016, the EIPD issued the Assailed Order finding Appellants liable for violating Section 26 of the SRC and imposed upon them the appropriate penalties provided in Section 54 of the SRC. The EIPD ruled that the transaction between Ms. Yucoco and the Spouses Galenzoga involved a sale of securities, not a loan because the statements/admissions of Mr. Galenzoga showed that the payment of the amount obtained from Ms. Yucoco is dependent on the success of the business operations of Orient Pearl Mining and/or will come from the profits of the corporation. The EIPD considered the amount obtained by Mr. Galenzoga from Ms. Yucoco as the share or participation of the latter in Orient Pearl Mining, although not in the form of shares of stock but in the form of investment contracts. The checks and promissory notes executed by Mr. Galenzoga were thus considered by the EIPD to be evidence of indebtedness. Finally, the EIPD held that all the elements of an investment contract are present in the transactions entered into by parties and that the Spouses Galenzoga's assurance made to Ms. Yucoco that the business will generate profit that will enable them to pay the

---

[9] *Ibid.* Par. 15
[10] *Joint Counter-Affidavit.* Pars. 7, 20 and 28
[11] *Ibid.* Pars. 10-17
[12] *Assailed Order.* page 3

guaranteed interests constituted fraud because Ms. Yucoco was made to believe that the business will be 100% successful.

On 13 September 2016, the Spouses Galenzoga filed the instant Appeal praying for the reversal of the Assailed Order, arguing that the EIPD committed reversible error in giving due course to the Complaint which allegedly violated the rule on non-forum shopping; in treating the promissory notes as investment contracts, which is contrary to the terms of the latter; and in finding that they committed fraud sans the quantum of proof required by law.

On 28 September 2016, Complainant-Appellee filed her *Reply Memorandum* dated 23 September 2016 therein praying for the dismissal of the Appeal, arguing that the simultaneous filing of the complaints before the Office of the City Prosecutor of Quezon City and the Commission does not constitute forum shopping. Ms. Yucoco also reiterated her argument that the promissory notes executed by Mr. Galenzoga are securities in the form of evidences of indebtedness under the SRC.

On 1 December 2016, Appellee Ms. Yucoco filed her *Supplemental Reply Memorandum* praying for the issuance of a decision sustaining the imposition of an administrative fine upon the Spouses Galenzoga, and directing the EIPD to file the appropriate complaint before the Department of Justice against the Appellants Spouses Galenzoga.

In compliance with the Order issued by the Commission, Reyes, and Feliciano Law Offices filed a Manifestation stating that it has withdrawn as counsel in the instant case as well as in all other cases handled by the firm for Ms. Yucoco due to professional and personal reasons, and prayed that it be relieved of all professional responsibilities related to the instant case.

Having received no other pleadings from the parties, the case was then deemed submitted for decision.

ISSUE/S

(I) Whether Complainant-Appellee is guilty of forum shopping.

(II) Whether Mr. Galenzoga is engaged in the sale/offer of "securities" in the form of investment contracts in violation of the SRC.

RULING

I. Complainant-Appellee did not violate the rule against Forum Shopping when she filed the instant case.

Respondents-Appellants maintain that the EIPD committed reversible error in giving due course to the Complaint of Ms. Yucoco, instead of summarily dismissing the same with prejudice, on the ground that it allegedly violated the rule against forum shopping. They argued that the filing of the Complaint violated the rule against forum shopping because Ms. Yucoco deliberately failed to declare the two (2) criminal complaints which she filed with the Office of the City Prosecutor of Quezon City (OCP-QC) involving materially similar transactions, facts, circumstances, and issues as those presented in the instant case. Respondents-Appellants further argued that Ms. Yucoco's act of seeking different reliefs will not remove the instant case from the ambit of forum shopping because such reliefs are allegedly grounded/based on the same transactions, causes, and issues.[13]

Complainant-Appellee countered with the argument that her simultaneous filing of the complaints before the OCP-QC and with this Commission does not constitute forum shopping as they are founded on different causes of action, i.e. the former was for violation of the Revised Penal Code, while the latter was for violation of the Securities Regulation Code.[14]

Forum shopping has been considered in our jurisdiction as a deplorable practice of resorting to multiple fora for the purpose of obtaining the same relief, to increase the chances of obtaining a favorable judgment.[15] It exists when a party avails himself/herself of several judicial remedies in different courts, simultaneously or successively, which are all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other courts.[16] The grave evil sought to be avoided by the rule

---

[13] *Memorandum of Appeal*. Pars. 39 and 46
[14] *Reply Memorandum*. Par. 3
[15] *Dy v. Mandy Commodities, Inc.* (G.R. No. 171842, July 22, 2009).
[16] *Intramuros Administration v. Offshore Construction Development Company* (G.R. No. 196795, March 7, 2018, *citing* Spouses Reyes v. Spouses Chung, G.R. No. 228112, September 13, 2017)

against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions.[17]

In *Zamora vs. Quinan*,[18] the Supreme Court laid down the test to determine if forum shopping exists, to wit:

> "To determine whether a party violated the rule against forum shopping, the most important factor to ask is **whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another**; otherwise stated, **the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought**.
>
> For its part, *litis pendentia* "refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious." **For *litis pendentia* to exist, three (3) requisites must concur**:
>
> The requisites of *litis pendentia* are: (a) **the identity of parties, or at least such as representing the same interests in both actions**; (b) **the identity of rights asserted and relief prayed for, the relief being founded on the same facts**; and (c) **the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to res judicata in the other**.
>
> On the other hand, **res judicata or prior judgment bars a subsequent case when the following requisites are satisfied**:
>
> (1) the **former judgment is final**; (2) it is **rendered by a court having jurisdiction over the subject matter and the parties**; (3) it is a **judgment or an order on the merits**; (4) **there is - between the first and the second actions - identity of parties, of subject matter, and of causes of action**." (Emphasis supplied)

---

[17] *Fontana Development Corp. v. Vukasinovic* (G.R. No. 222424, September 21, 2016)
[18] G.R. No. 216139, November 29, 2017.

Seen from the context of the foregoing established rules and parameters, this Commission holds that Ms. Yucoco did not violate the rule against forum shopping as the issues, causes of action, and reliefs sought in the instant case are different from the complaints filed with the OCP-QC.

A perusal of the allegations presented in the Complaints filed with the OCP-QC will readily show that the subject matters or the nature of the actions consist of criminal charges for estafa and syndicated estafa, respectively, as defined and punished under the Revised Penal Code (RPC). Consequently, the relief sought therein by Ms. Yucoco is the rendition of a judgment convicting the Spouses Galenzoga for violation of the RPC, and the payment by the latter of the civil liability. On the other hand, the nature of the action of the Complaint subject of the instant case consists of administrative and criminal action for alleged violation of Sections 8, 12, and 26 of the SRC, which is a special law; and the relief sought by Ms. Yucoco is the issuance of a Cease and Desist Order for the protection of investors, and the filing of an appropriate criminal complaint with the DOJ for investment fraud.

On account thereof, the Commission holds that forum shopping is absent on the ground the Complaints filed with the OCP-QC do not (or will not) constitute *litis pendentia* in relation to the instant case, because their respective subject matter(s) and causes of action are different. Specifically, an action for estafa under Article 315 of the RPC is entirely different from, and will not bar an action for violation of the SRC notwithstanding the fact that these actions are grounded/based on similar transactions or acts allegedly made by the Spouses Galenzoga. The foregoing is also explained by the fact that being a special law, the commission of an act that is prohibited under the SRC i.e. the sale/offer of unregistered securities without the requisite registration statement, is considered *malum prohibitum* and warrants the imposition of the appropriate administrative penalties if proven by the required quantum of evidence.[19] Necessarily, a determination on the culpability of Spouses

---

[19] When an act is *malum prohibitum*, "[i]t is the commission of that act as defined by the law, and not the character or effect thereof, that determines whether or not the provision has been violated."

In *ABS-CBN Corp. v. Gozon*, we discussed the difference between acts *mala prohibita* and *mala in se*:

> The general rule is that acts punished under a special law are *malum prohibitum*. "An act which is declared *malum prohibitum*, malice or criminal intent is completely immaterial."
>
> xxx xxx xxx

Galenzoga for estafa will not conflict with a judgment that this Commission will issue in passing upon Spouses Galenzoga's alleged acts of selling unregistered securities without a license. The possibility that conflicting judgments will be issued by the OCP-QC and this Commission, which the rule against forum shopping seeks to avoid[20], is thus nil.

Neither will the complaints filed by the OCP-QC amount to *res judicata* in the instant case because aside from the fact that their respective causes or action or subject matters are not identical as explained earlier, the complaints filed with the OCP-QC have not been judicially resolved with finality.[21]

II. The checks and Promissory Notes issued by Mr. Galenzoga

> Crimes *mala in se* presuppose that the person who did the felonious act had criminal intent to do so, while crimes *mala prohibita* do not require knowledge or criminal intent:
>
> > In the case of mala in se *it is necessary, to constitute a punishable offense, for the person doing the act to have knowledge of the nature of his act and to have a criminal intent; in the case of mala prohibita, unless such words as "knowingly" and "willfully" are contained in the statute, neither knowledge nor criminal intent is necessary*. In other words, a person morally quite innocent and with every intention of being a law-abiding citizen becomes a criminal, and liable to criminal penalties, if he does an act prohibited by these statutes.
>
> Hence, "*[i]ntent to commit the crime and intent to perpetrate the act must be distinguished.* A person may not have consciously intended to commit a crime; but he did intend to commit an act, and that act is, by the very nature of things, the crime itself[.]" When an act is prohibited by a special law, it is considered injurious to public welfare, and the performance of the prohibited act is the crime itself.
>
> xxx xxx xxx

The non-remittance of GSIS and Pag-IBIG Fund premiums is *malum prohibitum*. What the relevant laws punish is the failure, refusal, or delay without lawful or justifiable cause in remitting or paying the required contributions or accounts. *(Matalam v. People, G.R. Nos. 221849-50 (Resolution), [April 4, 2016])*

[20] Litis pendentia as a ground for the dismissal of a civil action refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious. The underlying principle of litis pendentia is the theory that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action. **This theory is founded on the public policy that the same subject matter should not be the subject of controversy** in courts more than once, **in order that possible conflicting judgments may be avoided** for the sake of the stability of the rights and status of persons. (Yap vs Te, G.R. No. 186730, June 13, 2012)

[21] "On the other hand, *res judicata* or prior judgment bars a subsequent case when the following requisites are satisfied:
(1) **the former judgment is *final;*** (2) **it is rendered by a court** having *jurisdiction* over the subject matter and the parties; (3) it is a **judgment or an order *on the merits;*** (4) there is - between the first and the second actions - *identity* of parties, of subject matter, and of causes of action." (Zamora vs Quinan. G.R. No. 216139, November 29, 2017)

are not securities under the SRC and its IRR.

In the Appeal, Respondents-Appellants maintained that the checks and the promissory notes that Mr. Galenzoga issued are not securities because by the terms thereof, the transaction entered into, and agreed upon by the parties is a simple loan.[22] Respondents-Appellants thus argued that the EIPD committed reversible error in concluding that the checks and promissory notes are securities under the SRC because the elements of the Howey Test are not present.[23]

In her Reply Memorandum, Complainant-Appellee however insisted that the checks and promissory notes are securities because they were allegedly issued in exchange for her investments and guaranteed a high rate of return. She claimed that in the instant case, she is an investor who was led to expect a monthly return rate of 2-4%, through the checks and the promissory notes.[24]

In the Assailed Order, the EIPD agreed with Complainant-Appellee and found that Mr. Galenzoga convinced the latter to invest in Orient Pearl Mining, and concluded that his issuance of the checks and promissory notes was meant to guarantee that the business of the corporation will yield profits. According to the EIPD, the checks and promissory notes that Mr. Galenzoga issued were therefore securities in the form of evidences of indebtedness because they will be paid from the profits to be derived from the business operations of Orient Pearl Mining.[25]

We find for Respondents-Appellants.

Section 3.1 of the SRC defines securities as follows:

> "**Section 3.** *Definition of Terms.* - 3.1. "Securities" are **shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture** and **evidenced by a certificate, contract, instruments**, whether written or electronic in character. It includes:

---

[22] *Appeal.* Par. 61
[23] *Ibid.* pars. 70 and 71
[24] *Reply Memorandum.* page 14
[25] *Order.* Page 7

(a)Shares of stocks, bonds, debentures, notes, **evidences of indebtedness**, asset-backed securities;

xxx" (Emphasis and underscoring supplied)

Just like the securities acts of other jurisdictions, specifically the United States of America where our securities laws were patterned, the SRC has adopted a broad definition of securities with the intent of covering practically all forms and varieties thereof which are known or considered, or ought to be known or considered, to be such in the commercial/financial world. Thus, in the case of *Gabionza vs. Court of Appeals*[26] (the "Gabionza Case"), the Supreme Court ruled that the term "securities" embodies a flexible rather than static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek to use the money of others on the promise of profits.[27]

Although foreign case law is merely persuasive authority and our adjudicatory bodies are not bound by the legal perspective expounded in the aforementioned case, said case provides a useful framework in our own examination of the scope of the term securities.

On the basis of the foregoing statutory and jurisprudential bases, this Commission has consistently held that **all shares, participation, or interests in a corporation or in a commercial enterprise or profit-making venture and evidence by a certificate, contract, instrument, whether written or electronic in character within the Philippines are securities or presumed to be securities**.

A certificate or evidence of indebtedness is *a written representation of debt securities or obligations of corporations* such as long term commercial and short-term commercial papers.[28] A certificate of indebtedness pertains to certificates for the creation and maintenance of a permanent improvement revolving fund, similar to a "bond". Being equivalent to a bond, it is properly understood as an acknowledgment of

---

[26] G.R. No. 161057, 12 September 2008.

[27] In the US case of ***Reves et al vs. Ernst & Young*** the US Supreme Court stated that the US Congress enacted a definition of "security" sufficiently broad to encompass virtually any instrument that might be sold as an investment. Because the US Securities Acts define "security" to include "any note", **the presumption is that every note is a security** and that presumption may be rebutted ***only by a showing that the note bears a strong resemblance to the one of the enumerated categories of instrument that does not fall under the securities category***.Reves et al. vs. Ernst & Young, 494 U.S. 56, 21 February 1990.

[28] Decasa, Lucia M., *Securities Regulations Code Annotated with Implementing Rules and Regulations*, 2004, 1st ed., p.7.

an obligation to pay a fixed sum of money. It is usually used for the purpose of long-term loans.[29]

Under the SRC, evidences of indebtedness are considered securities and must be registered with the Commission unless the issuer shows that the same are exempt from registration. Subsection 8.1 of the Securities Regulation Code (SRC) is categorical in stating that "***securities shall not be sold or offered for sale or distribution*** *within the Philippines, without a registration statement duly filed with and approved by the Commission*." This is justified by the fact that stock market transactions affect the general public and the national economy. The rise and fall of stock market indices reflect a considerable degree of the state of the economy. Trends in stock prices tend to herald changes in business conditions. Consequently, securities transactions are impressed with public interest, and are thus subject to public regulation.[30] In the case of *Herbosa vs. CJH Development Corporation,*[31] the Supreme Court emphasized that the purpose of the provision of the SRC requiring the registration of securities is to afford public protection from investing in worthless securities.

Relative thereto, the Commission has maintained a position that the registration requirements prescribed under the SRC are applicable if the registrant or someone acting for it intends a public offering or distribution of the registrant's securities.[32] Whether a particular transaction involves a public offering depends on all the surrounding circumstances; the test is: "*Is there a sufficient subsisting connection between the company or the person making the offer and the persons to whom the offer is made as friends, customers, or co-adventurers, etc. or are the persons mere outsiders*? If they are mere outsiders the offer is made to the public, and in such case, the fact that the offer is made to a limited class, e.g., to the members of a single company (not being the company offering its shares), or to the members of a few companies, or to the members of a particular profession, or to the investors in a particular class of companies, does not make it less an offer to the public."

Thus, as a general rule, the sale, offer, or distribution of securities within the Philippines is a regulated activity and should therefore be made only on the basis of a license duly issued by the Commission. The law, however, expressly recognizes and provides that certain securities[33]

---

[29] G.R. No. 93397, Traders Royal Bank vs. Court of Appeals, 3 March 1997.
[30] G.R. No. 160016, Abacus Securities Corporation vs. Ampil, 27 February 2006.
[31] G.R. No. 210316, 28 November 2016.
[32] SEC-OGC Opinion No. 04-09, Re: Registration of Securities, 16 February 2009.
[33] Section 9 of the SRC

or transactions[34] are exempt, for which reason, they are not required to be registered. One of the exempt transactions recognized by law is the sale of securities by an issuer to less than twenty (20) persons during any twelve (12) month period.[35]

On the basis of the foregoing, this Commission holds that while checks and the promissory notes issued by Mr. Galenzoga are evidences of indebtedness inasmuch as they are written representations of debt securities or obligations, which therefore fall under the definition of "securities" under the SRC, such checks and promissory notes, as well as the loan transaction subject of the instant case, are not required to be registered since they were issued to one individual only. In fact, there is nothing in the records which shows that Mr. Galenzoga issued checks and promissory notes to other persons other than Complainant-Appellee.

Against the foregoing factual backdrop, it is also not difficult to see that, contrary to Complainant-Appellees' assertion, the case of Gabionza vs Court of Appeals (the "Gabionza Case") is not applicable to the instant case. In the Gabionza Case, the checks that were issued by ASB Holdings to secure the short-term loans (on a recurring basis) in the aggregate amount of P4Billion that it obtained from about 700 lenders, were considered by the Supreme Court to have assumed the nature of securities in the form of evidences of indebtedness because they were issued in lieu of the securities with the intent of taking the case out of the purview of the securities law which requires a prior license to sell or deal in securities and registration thereof. The circumstances in the Gabionza Case are not present in the instant case, specifically considering that Mr.Galenzoga obtained a loan and issued checks/promissory notes to secure the same, to only one (1) person i.e. Complainant-Appellee.

In addition to the foregoing, this Commission takes cognizance of the fact that Mr. Galenzoga and Complainant-Appellee executed promissory notes[36] which specifically embody the terms and conditions that they agreed upon relating to the payment by the former of the principal loan amount and interest, to wit:

> "Principal Amount: P2,000,000.00 Date: 20 January 2009
>
> For the amount received, the undersigned, REYNALDO S. GALENZOGA, with office address at Orient Pearl Mining

---

[34] Section 10 of the SRC
[35] Section 10(k) of the SRC
[36] Verified Complaint. Annexes "J", "K", and "L"

Corporation, 1903-B Tektite West Tower, Philippine Stock Exchange Centre, Exchange Road, Ortigas Center, Pasig City (the "Borrower"), promises to pay to the order of BELENE Y. LIMSENKHE (the "Lender"), with address at 11 Dagot St. Manresa, Quezon City, or at such other place as the Lender may from time to time designate to the undersigned in writing, in lawful money of the Republic of the Philippines, the principal sum of TWO MILLION PESOS (P2,000,000.00).

1. **Interest**. Interest shall accrue on the principal sum due hereunder from the date hereof at the rate of 5% per month.
2. **Repayment**. Borrower shall pay to the Lender the principal sum outstanding hereunder, plus accrued interest, 12 months from the date hereof. The Promissory Note may be repaid at any time, in whole or in part, without the prior written consent of the Lender and without prepayment premium or penalty, upon prior written notice to Lender. All interest accrued on the principal amount being prepaid shall be paid at the time of such prepayment.
3. **Default**. An event of Default shall be deemed to have occurred under the Promissory Note if Borrower shall fail to pay when due any amount of principal or interest due hereunder. In the case of any of (i) an Event of Default, (ii) the death of Borrower, or (iii) the termination of Borrower's employment with Lender, then Lender may, at its option by written notice to borrower, declare immediately due and payable the unpaid principal balance due hereunder and interest accrued thereon. The Lender may take any action or proceeding at law or in equity which Lender deems advisable to collect and enforce payment of all amounts due under this Promissory Note, whether by reason of maturity of such amounts or acceleration thereof pursuant to an event of default. In addition, and not by way of limitation, in case of an Event of Default, the Borrower hereby expressly consents to the offset by Lender of any payments due Borrower from Lender in an amount equal to all amounts due under this Promissory Note, whether by reason of maturity of such amounts or acceleration thereof pursuant to an Event of Default. The Borrower shall pay all expenses, court costs and reasonable attorney's fees which may be incurred in connection with the enforcement or collection of any amounts due under this Promissory note or which otherwise may result out of any Event of Default. xxx"

The afore-quoted provisions of the Promissory Note clearly spell out the contractual relation of "Lender-Borrower" that the parties agreed upon and established, which equally defined the nature of their transaction i.e. simple loan. The grant to the Borrower of the option to prepay the principal amount together with the accrued interests as of the date of the prepayment (as well as in an Event of Default), supports this finding.

Relative thereto, this Commission notes the fact that the Office of the City Prosecutor of Quezon City, which dismissed the Complaint of Complainant-Appellant for syndicated estafa, arrived at the same conclusion that the transactions entered into by the parties were a simple loan, after reviewing the documents presented in evidence (which are practically the same as in the instant case), thus:

> "The complainant is a businesswoman. Considering her social stature, the nature of the transaction and the amount of money involved, it is reasonable to presume that she exercised adequate care and diligence in studying the Promissory Notes, which clearly indicate that the transactions were that of loan, prior to their execution. In fact Rule 131, Section 39d) of the Rules of Evidence provides for a disputable presumption that a person takes ordinary care of his/her concern.
>
> Hence, this Office cannot subscribe to the complainant's contention that her transaction with the respondents was one of investment. No investment contract signed by the corporation was executed. In fact, when the complainant, through her legal counsel, sent respondent Reynaldo Galenzoga a demand letter dated November 8, 2010, the complainant referred to her transaction as one of loan, not investment."[37] (Emphasis supplied)

Anent the allegation of Complainant-Appellee that the monies that were borrowed from her, which were the subject of the checks and the Promissory Notes, were allegedly investments where she expected to receive the returns (in the form of interests) guaranteed by Mr. Galenzoga, this Commission holds that the same cannot be given credence in the light of the parol evidence rule embodied in Section 9, Rule 130 of the Revised Rules on Evidence, which expressly prohibits any party from adding to, or contradicting the terms of a written agreement by testimony or other evidence purporting to show a different terms

---

[37] *Memorandum of Appeal*. Annex "D" (see Resolution dated 29 April 2015 in NPS No. XV-03-INV-14J-10166 issued by the Office of the City Prosecutor of Quezon City)

were agreed upon by the parties, which effectively varies the terms of the written contract[38], thus:

> "When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

On the basis thereof, this Commission holds that the allegation of Complainant-Appellee relating to her alleged investments in Orient Pearl Mining which were solicited by Mr. Galenzoga, cannot negate the fact that the transactions entered into the parties were a simple loan, as shown by the checks and Promissory Notes. This renders the instant case outside the ambit of the regulatory powers of the Commission as the action for collection of a debt which is due and demandable and/or a possible criminal action is one that is lodged with, and cognizable by the regular courts.

Complainant-Appellee in fact, actually admitted that the transaction which she entered into with Mr. Galenzoga was a simple loan when she filed a Manifestation informing this Commission that the civil case for sum of money with damages, involving the same transactions the subject of the instant case, has been decided upon in her favor by the Regional Trial Court (Branch 90) of Quezon City.[39] This being the case,

---

[38] "The "parol evidence rule" forbids any addition to or contradiction of the terms of a written instrument by testimony or other evidence purporting to show that, at or before the execution of the parties' written agreement, other or different terms were agreed upon by the parties, varying the purport of the written contract. When an agreement has been reduced to writing, the parties cannot be permitted to adduce evidence to prove alleged practices which, to all purposes, would alter the terms of the written agreement. Whatever is not found in the writing is understood to have been waived and abandoned. x x x. (Citation omitted)

These rule and principle notwithstanding, the petitioner would have the Court rule that the CTS it executed with the respondents falls within the exceptions, more specifically that the written agreement failed to express the true intent and agreement of the parties considering that the same is also subject to the condition that all pending litigations relative to the subject properties are settled. This argument is untenable.

It is well settled that parol evidence can serve the purpose of incorporating into the contract additional contemporaneous conditions, which are not mentioned at all in writing, only if there is fraud or mistake.[35] Here, the petitioner's claim that the reason for their failure to pay the full purchase price was due to the failure of the respondents to settle the pending litigation involving the subject properties is not tenable. Clearly, a perusal of the CTS executed by the parties does not show any provision pertaining to such condition. Also, the petitioner failed to present sufficient evidence to show that such failure was due to fraud or mistake. (Felix Plazo Urban Poor Settlers Community Association, Inc. vs Lapat, Sr. (G.R. No. 182409, March 20, 2017)

[39] *Manifestation dated 17 January 2017*. Annex "A"

Complainant-Appellee has, by her own admission, effectively negated her claim that the instant case involves an investment fraud under the SRC.

WHEREFORE, premises considered, the *Notice of Appeal (Re: Order dated 16 August 2016) with Attached Memorandum of Appeal* filed by Respondents-Appellants Spouses Galenzoga is hereby **GRANTED**. The Assailed Order of the EIPD is hereby **REVERSED AND SET ASIDE**.

SO ORDERED.

Makati City, Philippines.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner