CORAZON D. VICARIO, ROMEO ACOSTA, LEA P. MANGOHIG, OLYMPIO D. LUNARIA, SEVILLANO R. BOTON, ABRAHAM B. BLANCAFLOR, CORAZON T. BASSIG, ROSELLER L. MANALO, ESTER F. OBLENA, JOIE YESIA, MARIA FELISA MANNGAN, BILLY T. VICARIO, JASMIN R. ALA, MARCELINO PANGANIBAN, LALAINE ALDE REMON, TERESITA EULALIO, AIME T. DE LOS REYES, ISIDRO F. CALLANGAN, VICENCIO I. NUESTRO, ROSEBELLA Q. CORTEZ, JOHNDOM DOMATOY, CLARITA BANGCAL, GEORGE G. GARCIA, DONATO S. GALLEGO, represented by Attorney-In-Fact, JOSEFINA B. CALLANGAN,
Complainants-Appellants,

-versus-

SEC En Banc Case No. 01-10-191
For: Review of CRMD Order

DE LA SALLE-ARANETA UNIVERSITY, INC., and its PRESENT AND FORMER BOARD OF TRUSTEES AND OFFICERS,
Respondents-Appellees.

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DECISION

For consideration is the *Appeal* dated 21 January 2010 filed on even date by Corazon D. Vicario, et al. ("appellants", for brevity), praying for the setting aside of the 9 December 2009 *Order* of this Commission's Company Registration and Monitoring Department ("CRMD") dismissing appellants' *Complaint* for the declaration of nullity of the Amended Articles of Incorporation ("AAI") of De La Salle – Araneta University Inc. ("appellee DLSAU") approved by the Commission in 2002 ("2002 AAI"), 2003 ("2003 AAI") and 2005 ("2005 AAI").

The facts are:

On 26 September 1947, Araneta Institute of Agriculture ("AIA"), a **stock and profit corporation** with SEC Registry No. 3134, was established as a private agricultural school.

On 11 February 1966, AIA was registered or incorporated anew by its founder, along with a few others, as a **non-stock, non-profit educational**

foundation under the corporate name *Araneta University Foundation* ("AUF"), with SEC Registration No. 28678.[1]

On 5 February 1970, Articles II and VI of the Articles of Incorporation of AUF were amended.[2]

On 7 February 1978, the change of name of AUF to *Gregorio Araneta University Foundation* ("GAUF") was approved by the Commission.[3]

Following its affiliation with the De La Salle University System, GAUF changed its name to *De La Salle – Araneta University Inc.* ("DLSAU"). On 31 May 2002, the AAI effecting this change of name was approved by the Commission.[4] This is how appellee DLSAU acquired its present name.

On 27 November 2003, the Commission approved the amendments of Articles II, V and VIII of the Articles of Incorporation of appellee DLSAU, which amendments manifest and emphasize that appellee DLSAU is now a member of, and administered, maintained and operated by, the De La Salle University System.[5]

On 13 October 2005, the amendment of the purpose clause(s) of appellee DLSAU was approved by the Commission, thereby empowering the corporation to include in its services the provision of "*a Special Education Program in the Basic Education Department.*"[6]

On 18 February 2009, appellants filed before the CRMD a *Complaint* praying for the declaration of nullity of the 2002, 2003 and 2005 AAI on the grounds that:

(a) the Certificate of Amendment of the 2002 AAI was signed by the Board of Trustees and attested by the Corporate Secretary on 10 May 2002 in Mandaluyong City, outside the Notarial Commission of a Notary Public commissioned in Pasig City, and without indication by such Notary Public of his Professional Tax Receipt ("PTR") No. and of the information required to be entered in the Notarial Register, but with a P5.00 BIR Stamp.

(b) several amendments in Article II of the 2002 AAI were not disclosed in the Certificate of Amendment, defying Section 16 of the Corporation Code ("the Code") and Republic Act ("R.A.") No. 6055[7].

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[1] *Complaint*, Annexes "A", "A-1" and "A-2".
[2] Id, Annex "B".
[3] *Reply Memorandum*, Annex "3" of Annex "5".
[4] Supra, Note 2, Annex "E".
[5] Ibid, Annex "H".
[6] Ibid, Annex "J".
[7] An Act To Provide For The Conversion Of Educational Institutions From Stock Corporations To Non-Profit Foundations, Directing The Government Service Insurance System, The Social Security System And The Development Bank Of The Philippines To Assist In Such Conversion, And For Other Purposes (1969).

(c) the amendments in Articles II, V and VII of the 2003 AAI contravene RA 6055.

(d) the Certificate of Amendment of the 2005 AAI was signed in the City of Manila outside the Notarial Commission of Sinforoso R. Pagunsan in Pasay City.

(e) the amendment in Article II of the 2005 AAI which includes a Special Education Program in the Basic Education Department was effected without the recommendation of the Commission on Higher Education ("CHED") required under Section 17 of the Code.

On 9 December 2009, CRMD issued its herein assailed *Order*, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Complaint is hereby **DISMISSED** for lack of merit."

Hence, this *Appeal*.

On 12 March 2010, appellee DLSAU filed its *Reply Memorandum*, praying that the instant *Appeal* be dismissed on the ground that the *Appeal Memorandum* does not contain a certification of non-forum shopping, as required by Section 11-2 of the Commission's 2006 Rules of Procedure ("2006 Rules"). On the merits, appellee DLSAU reiterates its arguments made before the CRMD.

On 12 April 2010, appellants filed their *Rejoinder Memorandum*.

As culled from the pleadings herein filed, the following are the issues to be considered:

(a) whether the *Appeal* should be dismissed for non-compliance with the certification of non-forum shopping;

(b) whether the CRMD failed to appreciate the materiality of the notarization requirement relative to the 2002 and 2005 AAI; and

(c) whether CRMD erred in ruling that there is no violation of RA 6055.

ON CERTIFICATION OF NON-FORUM SHOPPING

Sections 11-2 and 11-6 of the 2006 Rules provide:

> "Sec. 11-2. How Appeal is Taken. – Appeal may be taken by serving upon the adverse party and filing with the Commission En Banc within fifteen (15) days from notice of Decision, Order or Ruling, a Notice

> of Appeal and a Memorandum on Appeal and paying the corresponding docket fee therefor. Provided, that **no appeal shall be given due course unless it includes a certification of non-filing of multiple petitions and complaints provided for in Section 3-5 hereof.**" (Emphasis ours).
>
> "Sec. 11-6. Dismissal of Appeal for Non-Compliance. – **The appeal may be dismissed by the Commission En Banc for failure to comply with these Rules**, or failure to perfect the appeal within the prescribed period." (Emphasis ours).

A careful perusal of the *Appeal Memorandum* reveals that it does not contain the requisite certification of non-forum shopping. On this ground alone, the *Appeal* should be dismissed.

ON THE NOTARIZATION ISSUE

Section 16 of the Code mandates that a copy of the AAI "*duly certified under oath by the corporate secretary and a majority of the directors or trustees stating the fact that said amendment or amendments have been duly approved by the required vote of the stockholders or members shall be submitted to the Securities and Exchange Commission.*"

Appellants insist that the respective Secretary's and Directors'/Trustees' Certificates of Amendment to the 2002 and 2005 AAI of appellee DLSAU are not compliant with the above requirement because they were notarized outside of the concerned Notary Public's territorial jurisdiction encompassed by his/her Notarial Commission.

Specifically, appellants essentially question the authority of the Notary Public in notarizing in **Mandaluyong City** the Certificate of Amendment to the **2002 AAI** on the ground that he is commissioned in **Pasig City**. Similarly, they impugn the authority of the Notary Public in notarizing in **Manila City** the Certificate of Amendment to the **2005 AAI** on the ground that he is commissioned in **Pasay City**.

It is elementary that he who alleges a fact has the burden of proving it.[8] In the case at bar, appellants failed to prove by substantial evidence that the Notaries Public who notarized the Certificates of Amendment to the 2002 and 2005 AAI were not authorized to perform notarial acts in Mandaluyong City and Manila City, respectively. To establish such fact, they only had to check with the Clerks of Court of Mandaluyong City and Manila City whether or not the Notaries Public are duly commissioned in the said jurisdictions when the notarial acts were performed. That the PTR's of the Notaries Public for the 2002 and 2005 AAI appear to have been obtained in Pasig City and Pasay City, respectively, does not necessarily mean that such Notaries Public have not been respectively commissioned in Mandaluyong City

[8] *Ledesma vs. NLRC, et al.*, G.R. No. 174585, October 19, 2007.

and Manila City during the material dates. To prove this point, it appears that the Notary Public who notarized the Certificate of Amendment to the 2005 AAI (whose PTR is indicated to have been obtained in Pasay City) was in fact commissioned as such in Manila City, as evidenced by the Certification issued by the Office of the Clerk of Court-Notarial Section of the Regional Trial Court of Manila.[9]

A notarized document has in its favor the presumption of authenticity, due execution and regularity.[10] The solemnities attending its execution are disputably presumed to be regular.[11] It is also *prima facie* evidence of the facts expressed therein.[12] As such, it is entitled to full faith and credit upon its face.[13] Whosoever alleges the fraud or invalidity of a notarized document has the burden of proving the same by evidence that is clear, convincing and more than merely preponderant.[14]

At this juncture, it must be stressed that the Commission receives and processes countless documents in the course of the performance of its official functions. Because of this, the Commission, like the public, the courts, or any other administrative agency, is entitled to rely upon the acknowledgment/certification executed by a notary public and appended to a private instrument.

We agree with the finding of CRMD that appellants were not able to rebut such presumption(s). Specifically, they failed to substantiate with clear and convincing proof that the signatories to the Certificates of Amendment to the 2002 and 2005 AAI did not personally appear before the Notaries Public. Neither did they adduce evidence to show the falsity of the matters sworn to in the said Certificates. Hence, Section 16 of the Code was substantially complied with.

ON R.A. 6055

At the proceedings *a quo*, appellants argued that Article V of the 2003 AAI contravenes Section 4 of R.A. 6055[15] in that it removed the head of the highest student organization as an *ex-officio* member of the Board of Trustees.[16]

Section 1 of R.A. 6055 reads:

> "Section 1. **Any educational institution, organized as a stock corporation,** which for at least ten years has been conferring baccalaureate degrees and has maintained its good standing as required by Section two, paragraph (b) of this Act, **may convert itself into a**

[9]Annex "1" of respondents' *Reply (to complainants' Memorandum dated 3 August 2009 and Supplemental Memorandum dated 17 August 2009)* filed before the CRMD.
[10]*Herbon, et al. vs. Palad*, et al., G.R. No. 149542, July 20, 2006.
[11]*Tan Tiong Bio vs. Gonzales*, A.C. No. 6634, August 23, 2007.
[12]*Rufina Patis Factory, et al. vs. Alusitain*, G.R. No. 146202, July 14, 2004.
[13]Supra, Note 5.
[14]*Mendezona, et al. vs. Ozamiz, et al.*, G.R. No. 143370, February 6, 2002.
[15]Section 4. The management of the Foundation shall be vested in the Board of Trustees to be known as the "Board of Trustees of the Foundation." The Board of Trustees shall be composed of ten elective members, with a term of five years **and the head of the highest student organization as ex-officio member.** xxx.
[16]*Complaint*, pp. 7-8 (Second Cause of Action) in relation to p. 9.

non-stock non-profit education foundation, under the following **conditions:**

(a) That the stockholders of the corporation, by two-thirds vote in a stockholders' meeting called for the purpose, **agree upon a resolution to convey their shares to the corporation**, which is hereby authorized to acquire said shares, at a price fixed by them: xxx.

(b) That the stockholders in said meeting elect the board of trustees for the foundation which shall be organized **upon the conveyance of the shares of the stockholders to the corporation;**

(c) That a copy of the resolution of the stockholders containing the above matters, certified by the governing board, shall be filed with the Securities and Exchange Commission; and

(d) That the articles of incorporation and the by-laws of the corporation shall be amended to conform to the status of the educational institution as a foundation: *Provided*, **That such amendments shall become effective upon the conveyance of all the shares of the stockholders to the corporation**, which shall thereafter be known as a foundation: xxx." (Emphasis ours).

It is clear from the language of the foregoing provision that the coverage of R.A. 6055 is limited to those **stock educational corporations which convert to *non-stock non-profit educational foundations***. We had long opined that an existing non-stock educational corporation would not come within the purview of R.A. 6055, which only authorizes the conversion of stock corporations to non-profit educational foundations.[17]

Appellee DLSAU does not fall within the ambit of R.A. 6055 because as early as 1966, way before the law's effectivity in 1969, it was already an existing non-stock non-profit educational corporation known as the *Araneta University Foundation*. Needless to state, it, consequently, could not have complied with the afore-quoted conditions of the law.

That the subsequent amendments to the Articles of Incorporation of appellee DLSAU adopt some of the provisions of R.A. 6055 and state that the corporation was incorporated under the said law is of no moment. Surely, mere statements and adoption of a law's provisions do not determine if a person is within the coverage of such a law; it is the language of the law itself which is controlling.

Moreover, it must be stressed that the 2002 and 2005 AAI were duly indorsed by the Department of Education, Commission on Higher Education, and the Technical Education and Skills Development Authority, the agencies having primary

[17] SEC Opinion dated 22 February 1971 addressed to Melecio Toledo, President of Isabela Colleges.

jurisdiction over educational institutions.[18] These indorsements/recommendations indicate that the 2002 and 2005 AAI are compliant with the educational laws, of which R.A. 6055 is one, which these agencies are tasked to implement.

WHEREFORE, premises considered, the instant *Appeal* is hereby **DENIED**, and the *Order* of the Company Registration and Monitoring Department dated 9 December 2009 is hereby **AFFIRMED**.

SO ORDERED.

Mandaluyong City, 28 October 2010.

JOSE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA*
Commissioner

MANUEL HUBERTO B. GAITE*
Commissioner

ELADIO M. JALA
Commissioner

[18]Supra, Note 3, Annexes "4", "6-C", "6-D" and "6-E" of Annex "5".
*On official travel