Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

IN THE MATTER OF:

AVENTINO B. CLAVERIA,
Appellant,

versus

SEC En Banc Case No. 05-06-79
(SEC – CFD Order No. 045
Series of 2006)

MEGAWORLD CORPORATION
and EMPIRE EAST LAND HOLDINGS, INC.,
Appellee
x----------x

DECISION

For consideration is the Appeal filed by Aventino B. Claveria ("Appellant") from the Order of the Corporation Finance Department ("CFD") dated 4 April 2006, the dispositive portion of which reads:

> "**WHEREFORE**, the Commission En Banc, in its meeting on March 23, 2006, resolved to adopt CFD's recommendation that the pending legal proceedings involving the respondent companies are **not material**, hence, not required to be disclosed in their Annual Reports.
>
> The instant complaint filed by Atty. Aventino B. Claveria against Megaworld Corporation and Empire East Landholdings (sic), Inc. for alleged misrepresentations in the submitted 2004 Annual Report (SEC Form 17-A) of the above mentioned companies is hereby **DISMISSED** for lack of merit."

FACTS OF THE CASE

Records show that appellant filed a Letter Complaint addressed to the Chair of the Commission, against Megaworld Corporation ("Megaworld") and Empire East Land Holdings, Inc. ("Empire East") on May 23, 2005 for alleged misrepresentations stated in their respective 2004 Annual Reports as prescribed in SEC Form 17-A.[1] Appellant alleged that Megaworld and Empire

[1] Annual Report Pursuant to Section 17 of the Securities Regulation Code (Periodic and Other Reports of Issuers) and Section 141 of the Corporation Code (Annual Report of Corporations) as Amended, February 2001.

East committed false and misleading statements when they declared in Item 3[2] of their respective 2004 Annual Reports that:

> "xxx there are no material pending legal proceedings to which the company or any of its subsidiaries and affiliates is a party or of which any of their property is subject."

Appellant alleged that on the contrary, the two companies were in fact involved in many legal proceedings, including Andrew Tan, their common Principal Executive Officer.[3] Appellant then enumerated the following cases: 1) Civil Case No. Q-02-47433 RTC Quezon City (2002, Andrew Tan impleaded as defendant); 2) Civil Case No. Q-03-50273 RTC Quezon City (2003); 3) Civil Case No. TM-1041 R TC Cavite (2000);4)Civil Case No. 67813 RTC Pasig (2000, Andrew Tan impleaded as defendant); 5) C.A. – G.R. SP. No. 78392 (2003)/Court of Appeals and 6) C.A. – G.R. SP. No. 83446(2004) Court of Appeals (incidents of Civil Case No. 67813); 7) (Megaworld) C.A.-G.R. CV No. 63439; 8)(Empire East) Civil Case No. 97-2700 RTC Makati City Branch 147

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[2] Item 3. Legal Proceedings (SEC FORM 17-A as Amended February 2001)

(a) Furnish the information required by Part I, Paragraph (C) of "Annex C, as amended".

(b) As to any proceeding that was terminated during the fourth quarter of the fiscal year covered by this report, furnish information similar to that required by Part I, Paragraph (C) of "Annex C, as amended" *, including the date of termination and a description of the disposition thereof with respect to the issuer and its subsidiaries.

* Part I, Paragraph (C) of "Annex C, as amended" reads as follows:

(C) Legal Proceedings.

Describe briefly any **material pending** legal proceedings to which the registrant or any of its subsidiaries or affiliates is a party or of which any of their property is the subject. Include the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought. Include similar information as to any such proceedings known to be contemplated by governmental authorities or any other entity.

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Instructions to Part I Paragraph C

A proceeding that primarily involves a claim for damages does not need to be described if the amount involved, exclusive of interest and costs, does not exceed 10% of the current assets of the registrant.

[3] Mr. Tan was President of Megaworld per General Information Sheet (GIS) filed on 12 July 2004 and Chair of Empire East based on the GIS filed on 24 June 2004.

(1997); and 9) Criminal Case I.S. No. 02-697 (for estafa vs. Antonio Tan, Vice-President of Megaworld.[4]

Accordingly, this fact was not disclosed in the Annual Reports (SEC Form 17-A) or Current Reports (SEC Form Annex 17 - C) required under Section 17[5] of the SRC and the SRC Rules. In his Letter-Complaint, appellant cited "Paragraph 6 of SRC Rule 17.1 (b)" [6] which applies to the subject 2004 Annual Reports. He requested that an investigation on the matter be conducted and appropriate sanctions be meted out for appellee's repeated violations of the disclosure rules.[7]

The CFD recommended to the Commission *En Banc*, the dismissal of the complaint on the ground that *the pending legal proceedings involving the respondent companies are found to be* ***not material****, hence not required to be disclosed in their Annual Reports.* On March 23, 2006, the Commission *En Banc* resolved to adopt CFD's recommendation. Thus, on April 4, 2006 CFD issued its SEC-CFD Order No. 045, Series of 2006, dismissing the complaint, for lack of merit.

Appellant now filed the instant appeal.

ISSUES

The issues are summarized as follows:

1) Whether or not the appeal should be given due course, even though appellant failed to attach SEC-CFD Order No. 045 to the Memorandum on Appeal as prescribed by SEC.17-5 of the 2000 Rules of Procedure of the Commission (2000 Rules of Procedure);[8]

2) Whether or not the appellant is a party-in-interest whose appeal should be considered by the Commission; and

3) Whether or not the legal proceedings enumerated by appellant, wherein the respondents and/or their common Principal Executive Officer, Andrew Tan are involved, are *material* information contemplated by the SRC Rules which should have been disclosed in the Respondents' 2004 Annual Reports.

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[4] The details of the cases are discussed in Annex "A" of the subject CFD Order.
[5] SEC. 17. *Periodic and Other Reports of Issuers.*
[6] Notice that this is in SRC Rules dated December 15, 2000, not in the SRC Rules dated December 30, 2003.
[7] Letter-Complaint May 23, 2005 p.4.
[8] The 2000 Rules of Procedure of the Commission applies to this case inasmuch as the Memorandum on Appeal was filed on June 5, 2006. The 2006 Rules took effect in January 2007.

LIBERAL APPLICATION OF TECHNICAL RULES

Strict compliance with the rules will result in the dismissal of the Appeal for failure of appellant to attach a copy of the subject Order. The provisions of the second paragraph of SEC.17-5 and SEC. 16-8 of the 2000 Rules of Procedure prescribe:

> "xxx
> The full names of all the parties to the proceedings shall be stated in the caption of the memorandum on appeal and ***shall include*** the decision, order or ruling from which the appeal is taken, and, in chronological order, ***copies of any such pleadings***, petition, motions and all interlocutory orders as are related to the appealed decision, order or ruling and necessary for the proper understanding of the issues involved, xxx." (Emphasis supplied)
> xxx"
> "The appeal may be ***dismissed*** by the Commission En Banc for failure to comply with these Rules xxx." (Emphasis supplied)

However, the Commission takes cognizance of the principle that procedural technicality should not prevail over substantive rights of a party to appeal. The spirit of liberality which animates the Rules rather than strict technicality would be more in keeping with the ends of justice.[9]

The issue of whether or not the appellant is a party-in-interest is addressed by the fact that the matter brought to the attention of the Commission by appellant is ***imbued with public interest*** inasmuch as respondents are publicly listed companies. The amended SRC Rules prescribe the interpretation of rules as follows: "Any doubt in the interpretation of these Rules shall be resolved by the Commission in a manner which would xxx ***protect investors, ensure full and timely disclosure of material information*** xxx." (Emphasis supplied)

The procedural issues having been settled, we shall give due course to the instant appeal.

DISCLOSURE OF MATERIAL INFORMATION

The appellant questioned the non-disclosure of legal proceedings in the Respondents' 2004 Annual Reports citing SRC Rule 17 of the 2000 SRC Rules. It is worthy, however, to point out that the 2000 SRC Rules were

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[9] National Electrification Administration (NEA) v. CA, G.R. No. L-32490 December 29, 1983, (126 SCRA 394); United Feature Syndicate, Inc., vs. Munsingwear Creation Manufacturing Company G.R. No. 76193 November 9, 1989.

amended on 30 December 2003 and the same took effect on February 28, 2004.

It follows that the IRR of the SRC dated 15 December 2000, as amended, (the "2003 SRC Rules") applies to the 2004 Annual Reports being challenged by the appellant. It also follows, that the determination of the materiality of the legal proceedings which the appellant believes should have been disclosed in the 2004 Annual Reports of the respondents shall be governed by the 2003 SRC Rules.

However, relying on the 2000 SRC Rules,[10] appellant alleged that CFD erred in intentionally using inapplicable and non-existing rules to expand and confuse the meaning of the word 'material' to absolve respondents from culpability.[11] He also claimed that "the 10% current assets criterion under the instruction" is inapplicable considering that only purely damage suit can be linked to the said 10% criterion, and that respondents' cases are for specific performance, the value of which is not capable of pecuniary estimation or monetary valuation.[12] He also asserted that it is not correct to hold that a criminal proceeding is required to be reported only upon conviction by final judgment.[13]

The 2000 SRC Rules defines material information as follows:

> "SRC Rule 3(1) (e): Material information means information which a reasonable investor would consider important in determining whether to buy, sell, or hold securities, or in connection with the exercise of related voting rights."

This definition under the 2000 SRC Rules is qualitative and there is no further definition of "material information" unlike the Amended SRC Rules, which added the quantitative measure, the 10% materiality test.

Amended SRC Rule 3 (1) A (I) provides:

> "Material Fact/Information means any fact/information that could result in the change in the market price or value of any of the issuer's securities, or would potentially affect the investment decision of an investor. See Rule 14 (1) for a non-exclusive enumeration of what constitutes material fact or information."

Amended SRC Rule 14 (1) provides:

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[10] Memorandum on Appeal, p. 2.
[11] *Id.* ,p. 17.
[12] *Id.*, p. 21.
[13] *Id.*,p. 34.

"For the purposes of this Rule, material information shall include, but not limited to, the following:

A. Any event or transaction which increases or creates a risk on the investments or on the securities covered by the registration;

xxx

E.Change in the work program or use of proceeds;

xxx

G. Significant or ten percent (10%) or more change in the financial condition or results of the operation of the registrant unless a report to that effect is filed with the Commission and furnished the prospective purchaser;"

The challenged Order determined the materiality of the pending legal proceedings enumerated above, using the two prescribed tests:

1) For those cases involving damages,[14] the Instructions to Part I Paragraph C of Annex C, as amended, which provides that "A proceeding that primarily involves a claim for damages does not need to be described if the amount involved, exclusive of interest and costs, does not exceed 10% of the current assets of the registrant;" and

2) For those cases where the claim not only involves damages, but also specific performance or other reliefs,[15] SRC Rule 3 (1) (I) of the Amended SRC Rules, mentioned above.

CFD made a tabular presentation of the claim for damages involving the cases in the years 2003, 2004, and 2005. It showed the amount of damages involved *vis a vis* the total current assets of the respondents for the corresponding years covered which range from .002% (lowest) to .08% (highest). This is way below the ten percent (10%) required for disclosure, thus there was no need to disclose the subject cases in the Annual Reports.

CFD then assiduously examined the cases where the claims do not only involve damages but specific performance or other reliefs, and considered the possibility of an unfavorable decision against the respondents.

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[14] Civil Case No. Q-02-47433 RTC Quezon City (2002); Civil Case No. Q-03-50273 RTC Quezon City (2003); Civil Case No. 67813 RTC Pasig (2000); and (Empire East) Civil Case No. 97-2700 RTC Makati City Branch 147 (1997).

[15] 1) Civil Case No. Q-02-47433 RTC Quezon City (2002); 2) Civil Case No. Q-03-50273 RTC Quezon City (2003); 3) Civil Case No. TM-1041 RTC Cavite (2000);4)Civil Case No. 67813 RTC Pasig (2000); 5) C.A. – G.R. SP. No. 78392 (2003)Court of Appeals and 6) C.A. – G.R. SP. No. 83446(2004) Court of Appeals (incidents of Civil Case No. 67813); 7) (Megaworld) C.A.-G.R. CV No. 63439; and 8)(Empire East) Civil Case No. 97-2700 RTC Makati City Branch 147 (1997);

The amount of possible obligations of the respondents arising from those cases ranges from the lowest at .0031% to the highest at 2.02%. Likewise, this is way below the ten percent (10%) required for disclosure, thus there was no need to disclose the subject cases in the Annual Reports.

Applying Part IV (A) (4) (b)[16] of Annex C to the estafa case against Antonio Tan (IS No. 02-697 Quezon City Prosecutor's Office), First Vice President for Operations[17] of Megaworld, the CFD Order concluded that there was no need "to disclose the pendency of said proceeding" because "what is required to be reported under Part IV (4) (b) of Annex C[18] is 'any conviction by final judgment'." But the ***appellant is correct***, that said case should have been reported because said provision provides ***"or being subject to a pending criminal proceeding."*** However, the case was dismissed by the Office of the City Prosecutor's Office on 30 July 2002 and Complainant's Motion for Reconsideration was denied on 28 March 2003. This matter has been rendered moot and there was no need to include it in the 2004 Annual Report.

WHEREFORE, premises considered, the instant appeal is hereby **DISMISSED,** for lack of merit.

SO ORDERED.

Mandaluyong City, 18 March 2010.

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[16] PART IV MANAGEMENT AND CERTAIN SECURITY HOLDERS

(A) Directors, **Executive Officers**, Promoters and Control Persons: This section requires disclosure of information concerning the background of the registrant's officers, directors, and other key personnel. A potential investor who reads this section should be able to consider whether or not these persons have adequate background and experience to develop and operate the registrant's business and make it successful.

xxx

(4) Involvement in Certain Legal Proceedings

xxx

(b) Any conviction by final judgment, including the nature of the offense, in a criminal proceeding, domestic or foreign, **or being subject to a pending criminal proceeding**, domestic or foreign, excluding traffic violations and other minor offenses; xxx

[17] Based on 2004 and 2002 General Information Sheet.

[18] Should be Part IV **(A)** (4) (b) of Annex C.

PE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner