Republic of the Philippines
Department of Trade and Industry
Securities and Exchange Commission
SEC Bldg. EDSA, Greenhills, Mandaluyong City

JULIAN T. ONG,
Petitioner,

-versus-

SEC Case No. 10-05-92
For: Involuntary Dissolution

CIRCLE J CORPORATION, HELEN JO CHUA, CRISTINA S. CANIZARES, and KEN B. NAVEA,
Respondents.

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DECISION

For consideration is the *Petition for Involuntary Dissolution Under Section 121 of Batas Pambansa Blg. 68* ("the *Petition*", for brevity) dated 11 October 2005 filed on 21 October 2005 by Julian T. Ong ("petitioner") against Circle J Corporation ("Circle J"), Helen Jo Chua, Cristina S. Cañizares, and Ken B. Navea ("individual respondents").

Circle J was incorporated on 9 September 1997 under SEC Registration No. D199700981 to engage in general construction and other allied businesses.

Petitioner prays for the dissolution of Circle J based on the following grounds:

> 1. Individual respondents arrogated and usurped unto themselves different and conflicting titles, designations and/or positions in Circle J without the benefit of a meeting of its stockholders;
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> 2. Individual respondents have been using Circle J as a tool for harassment, the perpetuation of fraudulent schemes and machinations, and forgery and falsification of documents, as shown by the allegedly forged signatures of petitioner in various contracts purportedly entered into by Circle J and in the corporation's lone Statement of Management's Responsibility dated 26 April 2004; and
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> 3. Circle J failed to consistently file the mandatory annual reportorial requirements for corporations, i.e. General Information Sheet ("GIS") and Financial Statements ("FS").

In their *Answer*, respondents argue that the allegation of non-filing of reportorial requirements is totally inaccurate, and that assuming this to be true, petitioner should be the first person to be blamed, being the corporation's President.

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They deny that they arrogated and usurped unto themselves different and conflicting titles, designations and/or positions without the benefit of a stockholders' meeting, the truth being that their appointments are pursuant to and by virtue of Board actions with the direct participation and approval of petitioner not only as such President but also as a director of the corporation. Lastly, the allegations of fraudulent schemes, respondents contend, are all but manifestations of petitioner's harassment of them. Respondents allege that petitioner had already previously filed/initiated intra-corporate and criminal cases against them, and that, consequently, they filed criminal cases against petitioner.

Petitioner and respondents filed their *Memoranda/Position Papers* on 6 January 2006 and 11 January 2006, respectively.

Jurisdiction over actions for revocation/cancellation of corporate franchise indubitably belongs to this Commission, pursuant to Section 6(l) of Presidential Decree No. 902-A ("PD 902-A"), as amended, which reads:

> "Section 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers: xxx xxx xxx
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> l) To suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships or associations, **upon any of the grounds provided by law**, including the following:
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> 1. Fraud in procuring its certificate of registration;
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> 2. Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public;
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> 3. Refusal to comply or defiance of any lawful order of the Commission restraining commission of acts which would amount to a grave violation of its franchise;
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> 4. Continuous inoperation for a period of at least five (5) years;
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> 5. Failure to file by-laws within the required period; and
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> 6. Failure to file required reports in appropriate forms as determined by the Commission within the prescribed period; xxx." (Emphasis ours).

In addition to the foregoing grounds, a corporation's certificate of registration may likewise be revoked for failure to formally organize and commence the transaction of its business or the construction of its works within two years from its incorporation, pursuant to Section 22 of the Corporation Code[1] ("the Code"), and for violations of any of the provisions of the said Code or its amendments not specifically penalized therein, as provided in Section 144 thereof.

[1]Batas Pambansa Bilang 168 (1980).

The issue now is whether sufficient grounds exist to warrant the revocation of Circle J's certificate of registration.

Anent the first ground (i.e., that individual respondents arrogated and usurped unto themselves different and conflicting titles, designations and/or positions in Circle J without the benefit of a meeting of its stockholders), the same goes into the validity of respondents' titles, designations and/or positions, and hence, involves an intra-corporate controversy. It is now settled that intra-corporate disputes, which include **controversies in the election or appointment of directors, trustees, officers or managers of such corporations, partnership or associations**, are now cognizable by concerned regional trial courts designated as commercial courts.[2]

As to the second ground (i.e., that individual respondents have been using Circle J as a tool for harassment, the perpetuation of fraudulent schemes and machinations, and forgery and falsification of documents, as shown by the allegedly forged signatures of petitioner in various contracts purportedly entered into by Circle J and in the corporation's lone Statement of Management's Responsibility dated 26 April 2004), it is not *per se* a ground for the revocation of the corporation's certificate of registration. Rather, it mainly reflects the internal struggle between the parties, and is intricately connected with cases pending before different judicial fora. It is not disputed by petitioner that the alleged falsifications and forgeries are now pending investigation by the Department of Justice ("DOJ").[3] It is likewise not disputed by petitioner that he filed a civil (arguably, intra-corporate) case against the respondents for *Recovery of Possession with Replevin* of vehicles, machineries and equipment from Circle J[4], which may very well be the subjects of the Deeds of Absolute Sale alleged to have been falsified/forged.[5] Hence, the Commission, under the circumstances, must exercise prudence, in due deference to the court and the DOJ.

At any rate, even if we were to consider such ground, the same, however, is unsubstantiated. Questioned Document Report No. 110-05, on which this ground is solely based, clearly states that no definite conclusion can be rendered on whether the questioned documents were falsified or forged because such documents were mere photocopies wherein minute details and other elements of handwriting are not clearly manifested.[6] Allegations of falsification and forgery, even for administrative proceedings, cannot be taken lightly, especially considering the facility with which they could just be made or invoked. The Report is not substantial proof of the alleged falsifications/forgeries.

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[2]Section 5.2 of Republic Act No. 8799, or the Securities Regulation Code of 2000, in relation to Section 5 of PD 902-A, as amended.
[3]See *Answer* and *Position Paper* of respondents, in relation to the *Memorandum* of petitioner.
[4]Civil Case No. 2005-103 entitled Masterwood Enterprises Corporation vs. Helen Chua and John Does pending before the Regional Trial Court of Cagayan de Oro City, Branch 17. (See page 5 of *Answer*, and page 3 of respondents' *Position Paper*, in relation to petitioner's *Memorandum*).
[5]Specimen Documents "Q-67", "Q-68" and "Q-69" (Annex "C-1" of the *Petition*).
[6]Annex "C-3" of the *Petition*.

To be sure, petitioner also invokes Section 144 of the Code; however, petitioner failed to pinpoint specific violations of the said statute. Be that as it may, it must be stressed that Section 144, while seemingly all-encompassing in nature in that it imposes criminal liability for "*violations of **any** of the provisions of this Code or its amendments not specifically penalized therein*", cannot be construed to mean that every non-compliance with the provisions thereof would entail criminal liability. Such a construction would seem too harsh, making the corporation a very unattractive medium for commerce. The "*violations*" covered thereby should include only those provisions in the Code which are expressly mandatory in nature to show the true intent of Congress to impose a penal sanction for non-compliance therewith.[7] Properly and reasonably construed, the phrase "*not otherwise specifically penalized therein*" should mean that even when the provision seems to be mandatory and the violation thereof is a serious breach, when the particular provision already provides for a specific penalty or sanction, the penal sanction under the said Section should not be made to apply.[8] Thus, Section 144, being an amended version and a substantial reproduction of Section 190-1/7 of the old Corporation Law[9], was not intended to make every casual violation of the Code a ground for involuntary dissolution of the corporation.[10]

Anent the third ground (i.e., non-filing of reportorial requirements), the Company Registration and Monitoring Department already issued on 8 April 2010 an Order revoking Circle J's certificate of registration for the company's failure to file the required reports within the prescribed periods.

WHEREFORE, premises considered, the instant *Petition* is hereby **DISMISSED**.

SO ORDERED.

03 June 2010, Mandaluyong City.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO *
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

[7] Cesar Lapuz Villanueva, Philippine Corporate Law 870-871 (2006).
[8] Ibid, p. 872.
[9] Act No. 1459, which took effect on 1 April 1906.
[10] Supra, Note 7, citing Government of the Philippine Islands vs. El Hogar Filipino (50 Phil. 399).

*on leave