Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

ADERITO Z. YUJUICO AND BONIFACIO C. SUMBILLA,
Petitioners,

SEC En Banc Case No. 01-11-225

For: Review on Certiorari [SEC Case No. 12-04-21, Office of the General Counsel]

-versus-

HON. VERNETTE G. UMALI-PACO, GENERAL COUNSEL OF THE COMMISSION, AND CEZAR T. QUIAMBAO,
Respondents.

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DECISION

For consideration of the Commission *En Banc* is a *Petition for Review on Certiorari* (***"Petition"***), dated 13 December 2010, under Rule XII of the 2006 Rules of Procedure of the Commission (***"Rules"***), filed by Aderito Z. Yujuico and Bonifacio C. Sumbilla (***"Petitioners"***) on 04 January 2011, seeking the reversal of the 14 December 2005 and 23 November 2010 Orders (***"Assailed Orders"***) of the Office of the General Counsel (***"OGC"***) in SEC Case No. 12-04-21 entitled *"In the Matter of Strategic Alliance Development Corporation (STRADEC)"* for being void or otherwise being rendered in grave abuse of discretion amounting to lack or excess of jurisdiction.

The 14 December 2005 Order of the OGC recalled the reconstituted stock and transfer book (STB) and cancelled its registration effected on 03 September 2004 on the ground that the original stock and transfer book was not lost, stolen, or destroyed. The 23 November 2010 Order, on the other hand, denied the Motion for Reconsideration of the 14 December 2005 Order filed by the Petitioners. Hence, the instant Petition.

Petitioners aver that the foregoing orders are void for having been issued without authority or with grave abuse of discretion amounting to lack or excess of jurisdiction based on the following grounds:

i. The General Counsel had no authority to adjudicate the complaint of Mr. Cezar T. Quiambao (***"Private Respondent"***);

ii. The complaint was filed in violation of the 2000 and 2006 Revised Rules of Procedure of the Commission;

iii. The General Counsel erroneously disregarded Private Respondent's acts of forum shopping; and

iv. Assuming arguendo that the General Counsel had authority, the Assailed Orders interfered with the lawful orders of the RTC Pasig.

Section 12-1, Rule XII of the Rules states:

"**Sec. 12-1. Petition for Review on Certiorari**. When any Hearing Officer/Panel of the Commission, has acted without or in excess of its jurisdiction, or with grave abuse of discretion and there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition with the Commission En Banc alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings, order or ruling of such Hearing Officer or Panel and granting such relief as the applicable laws may require.

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Petitioners claim that the General Counsel had no authority to adjudicate the complaint of Private Respondent as her function is limited to advisory.[1] The pertinent portion of the Petition reads:

"20. When, Mr. Quiambao filed his complaint directly with the Office of the General Counsel, the latter should have referred it to Compliance and Enforcement Division for hearing and adjudication. The General Counsel is the legal counsel of this Honorable Commission and does not perform quasi-judicial functions. Neither had this Honorable Commission *En Banc* assigned the complaint to the General Counsel, as there is nothing in the record showing such assignment. Even if this Honorable Commission assigned Mr. Quiambao's complaint to the General Counsel, her function should have been merely advisory, not adjudicatory."

Certainly, Petitioners are not questioning the jurisdiction of the Commission over the subject matter, but the authority of the General Counsel to exercise such jurisdiction. It must be stressed that Petitioners are now estopped from questioning the authority of the General Counsel to act in behalf of the Commission. Nowhere in Petitioners' *Comment*, dated 14 December 2004, did they questioned the authority of the General Counsel to act in behalf of the Commission. Instead, they asked for affirmative reliefs, thus:

"In view of the foregoing, Messrs. Yujuico and Sumbilla respectfully pray that this Honorable Commission deny Mr. Quiambao's request to cancel the registration of Strategic Alliance Development Corporation's reconstituted stock

[1] 13 December 2010 Petition for Review on Certiorari, paragraph 20.

> and transfer book and, in lieu thereof, (a) order Mr. Quiambao to surrender to this Honorable Commission STRADEC's stock and transfer book that he has unlawfully taken since June 2004, and to turn over the same to the corporation, through its incumbent corporate secretary, Atty. Milagros Isabel C. Amar, within five days from receipt thereof; and (b) should Mr. Quiambao fail and/or refuse to comply with such order of this Honorable Commission, then it should cancel said STRADEC stock and transfer book, the same having been duly reconstituted by the corporation.
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> Other reliefs are also prayed for."

As a general proposition, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court.[2] Needless to say, one who submits to the jurisdiction of a tribunal recognizes such jurisdiction. It cannot be overemphasized that said *Comment* was filed pursuant to the 08 December 2004 Order issued by the General Counsel for and in behalf of the Commission. It was only when their *Motion for Reconsideration*, dated 03 January 2005, was denied by the General Counsel that Petitioners questioned, thru the present Petition, the authority of the former to act in behalf of the Commission. Well-settled is the rule that participation in the administrative proceedings without raising any objection thereto bars the parties from raising any jurisdictional infirmity after an adverse decision is rendered against them.[3] Undoubtedly, Petitioners are now barred by estoppel from repudiating the authority of the General Counsel to act upon Private Respondent's letter complaint.

Further, Petitioners aver that the complaint was filed in violation of the 2000 and 2006 Revised Rules of Procedure of the Commission since it was not verified and no certification of non-forum shopping was attached thereto; thus, the complaint should have been dismissed, without prejudice.[4] In the case of ***Emilio S. Young vs. John Keng Seng***,[5] the Supreme Court emphasized that violation of the rule on certification against forum shopping must be raised at the earliest opportunity, lest it shall be deemed waived, thus:

> "In general, **violation of the rule on forum shopping should be raised at the earliest opportunity in a motion to dismiss or a similar pleading**. Invoking it in the later stages of the proceedings or on appeal may result in the dismissal of the action as an exception only if the violation arises from or will result in (1) the loss of jurisdiction over the subject matter, (2) the *pendency* of another action between the same parties for the same cause, (3) the barring of the action by a prior judgment, or (4) the crossing of the Statute of Limitations.
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[2] Reicon Realty Builders Corporation vs. Diamond Dragon Realty and Management, Inc., G.R. 204796, February 4, 2015, citing Philippine Commercial International Bank v. Spouses Dy 606 Phil. 615 (2009).
[3] Manuel D. Laxina vs. Office of the Ombudsman, et. al., G.R. No. 153155, September 30, 2005, citing Centeno v. Centeno, 397 Phil. 170, 178 (2000).
[4] Id., paragraph 21.
[5] G.R. No. 143464, March 5, 2003.

> Applying these principles to the instant case, we hold that **petitioner is barred from raising the ground of forum shopping in the Court of Appeals and in this Court. If only for his failure to invoke such ground at the first opportunity in his Motion to Dismiss filed in the trial court, his appeal should have been given short shrift and denied outright**."[6]

Here, Petitioners failed to raise the lack of verification and certification of non-forum shopping in their *Comment*, dated 14 December 2004; thus, they are deemed to have waived such defects. Further, the lack of a verification in a pleading is only a formal defect, not a jurisdictional defect, and is not necessarily fatal to a case.[7] A tribunal may act on the pleading although it is not verified if the attending circumstances are such that the strict compliance with the rule may be dispensed with in order that the ends of justice or the law may thereby be served.[8] It cannot be overemphasized that the rules of procedure of the Commission must be liberally construed to assist the parties in obtaining a just, prompt, expeditious, and inexpensive resolution, settlement, and/or disposition of all actions brought before it.[9]

In addition to the lack of certification of non-forum shopping, Petitioners allege that Private Respondent is guilty of forum shopping, and the General Counsel gravely abused her discretion when she disregarded it. It must be stressed that the rule on forum-shopping applies only to judicial cases or proceedings, and not to purely administrative cases.[10] It is settled that the SEC has the power to recall and cancel a STB that was erroneously registered as part of its regulatory jurisdiction.[11] In fact, as the regulatory body, it is the SEC's duty to ensure that there is only one set of STB for each corporation.[12] As contrasted by the General Counsel in 23 November 2010 Order:

> "In Civil Case No. SCC-2874 pending in the Regional Trial Court, Urdaneta City, Branch 48, petitioner Quiambao prayed for the Nullification of the 2004 Annual Stockholders' Meeting of STRADEC and Injunction or Prohibition. This action involves an intra-corporate controversy which must be decided exclusively by the Regional Trial Court. On the other hand, the case pending before the Commission is for the Cancellation of the Reconstituted STB of STRADEC which is purely administrative in nature. Thus, in the exercise of its regulatory and administrative functions, the Commission shall take cognizance of cases filed before it."

Evidently, there is no forum shopping in the instant case.

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[6] Emphasis and underscoring supplied.
[7] Spic N Span Services Corporation vs. Gloria Paje, et. al., G.R. No. 174084, August 25, 2010, citing Ballao v. Court of Appeals, G.R. No. 162342, October 11, 2006, 504 SCRA 227.
[8] In the matter of the change of name of Antonina B. Oshita. Antonina B. Oshita vs. Republic of the Philippines, G.R. No. L-21180, March 31, 1967.
[9] Section 1-3, Rule I, The 2006 Rules of Procedure of the Securities and Exchange Commission.
[10] Manuel D. Laxina vs. Office of the Ombudsman, et. al., G.R. No. 153155, September 30, 2005, citing Lucente v. Evangelista, 444 Phil. 721 (2003).
[11] Provident International Resources Corporation vs. Joaquin T. Venus, G.R. No. 167041, June 17, 2008.
[12] Id.

Petitioners also insist that by canceling STRADEC's reconstituted STB, the General Counsel interfered with the orders of RTC Pasig, a co-equal body.[13] They allege that the RTC Pasig ordered Atty. Joselito John G. Blando (***Atty. Blando***), the then Corporate Secretary of STRADEC, to hold in abeyance the cancellation of Mr. Yujuico's pledged STRADEC shares and to restore them, if cancelled, in the books of the corporation until further orders.[14] But Private Respondent unlawfully detain STRADEC's STB to thwart the implementation of the said Order.[15] Nonetheless, with the reconstitution of the STB, Atty. Blando was able to comply with the directive of the RTC Pasig.[16] And by canceling the reconstituted STB, the General Counsel became Private Respondent's instrument in indirectly nullifying the RTC Pasig's Orders.[17]

A STB is the quintessential record of all stockholders and their corresponding stockholdings in the corporation.[18] When the original stock and transfer book of a corporation is lost or destroyed, it may be reconstituted and the same must be registered with the Commission, accompanied by a sworn statement executed by any responsible corporate officer setting forth the circumstances attending the loss.[19] In other words, reconstitution as a remedy is available only when the STB is lost or destroyed. A perusal of the evidence on record shows that the STRADEC's STB was not lost or destroyed. Atty. Blando, in his affidavit,[20] attested that the stock and transfer book was deposited in a safety deposit box of Export and Industry Bank near the Regional Trial Court of Pasig City in the names of Bonifacio S. Sumbilla and Mr. Quiambao.[21] This fact is supported by Mr. Sumbilla's testimony in the 10 August 2004 hearing of Civil Case No. 70027, entitled "Aderito Z. Yujuico vs. United Resources Management, Inc. et. al." pending before the RTC Pasig.[22] We agree with the General Counsel that Petitioners should have asked the RTC Pasig to hold Private Respondent in contempt for his alleged unjustified refusal to surrender the STB to the Corporate Secretary. To emphasize, it is the Commission's duty to ensure that each corporation has only one STB. Clearly, the General Counsel's act of recalling and cancelling the reconstituted STB did not constitute grave abuse of discretion, much less an interference with the order of the RTC Pasig.

All told, no gravel abuse of discretion can be attributed to the General Counsel when she issued the Assailed Orders. In fact, said Orders are in accordance with law and established jurisprudence.

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[13] Note 2, paragraphs 36 and 37.
[14] Id., paragraph 31.
[15] Id., paragraph 32.
[16] Id., paragraph 34.
[17] Id., paragraph 36.
[18] SEC-OGC Opinion No. 15-03, dated 03 July 2015, addressed to Mr. Zandro O. Babol.
[19] Decasa, Lucila, M. *Handbook on Private Corporations (Domestic & Foreign)*[Quezon City: Rex Printing Company, Inc., 2009], p. 463, citing SEC Opinion dated September 3, 1992 addressed to Investment & Development, Inc.; SEC Opinion dated January 21, 1988 addressed to Atty. Victor Africa; SEC Opinion dated July 10, 1990 addressed to Santa Rosa Mining Company, Inc.
[20] 14 December 2004 Comment, Annex "**8**".
[21] Id., paragraph 11.
[22] 20 January 2011 Answer, Annex "**2**", p. 53.

WHEREFORE, premises considered, the *Petition for Review on Certiorari* is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Pasay City, Philippines, 06 December 2016.

TERESITA J. HERBOSA
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner