Republic of the Philippines
Department of Finance
Securities and Exchange Commission
PICC Secretariat Building, PICC Complex, Pasay City

NESCO INTERNATIONAL DEVELOPMENT CORPORATION,

- versus -

SEC EB Case No. 05-13-291

MEGAWORLD CORPORATION and ENFORCEMENT AND PROSECUTION DEPARTMENT.
x----------x

DECISION

This is an Appeal from the Letter-Order of the **ENFORCEMENT AND PROSECUTION DEPARTMENT (EPD)**[1] dated 23 April 2013, where **NESCO INTERNATIONAL DEVELOPMENT CORPORATION (NESCO)'s** complaint against **MEGAWORLD CORPORATION (MEGAWORLD)** for Serious Misrepresentation[2] was dismissed for lack of jurisdiction over the subject matter.

NESCO alleged in its Complaint that MEGAWORLD was misrepresenting to the public that it has **genuine** title to certain lots in the City of Manila—*i.e.* the lots upon which *City Place at Binondo Condominium* and *Lucky Chinatown Plaza Mall* are currently standing—and that these land titles are **fake**, acquired in conspiracy with the City Government of Manila during the term of former President Gloria Macapagal-Arroyo. The EPD dismissed NESCO's Complaint because it could not be resolved without ruling on the validity of land titles, a matter outside its jurisdiction.

The pertinent portions of the assailed **EPD Letter-Order** read thus:

> Please be informed that after careful examination of NESCO's allegations, the EPD has determined that the Commission has no jurisdiction over the instant Complaint.
>
> For one, it appears that the pivotal issue in this case is that of the validity of the titles of the City of Manila over the Cuartel Meisic property, an issue which is clearly beyond the competence of the Commission to resolve.

---

[1] Now known as the Enforcement and Investor Protection Department (EIPD).
[2] Section 6(l)(2) of PD 902-A, as amended.

> Moreover, the fact that NESCO charges MEGAWORLD with violation of Section 6(l)(2) of Presidential Decree No. 902-A does not suffice to confer upon the Commission jurisdiction over the instant case, as the same is in the nature of a collateral attack on the questioned titles, and thus contravenes Section 48 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree xxx
>
> xxx In this case, notwithstanding the fact that the reliefs sought by NESCO xxx appear to be well within the powers of the Commission, the same cannot be exercised without overstepping the bounds of the Commission's jurisdiction. NESCO's prayer for the foregoing reliefs requires an inquiry into the validity of the questioned titles, which is a task that the Commission is not authorized to perform.[3]

It is likewise well to note that NESCO's reliance on on Section 6(l)(2) of Presidential Decree No. 902-A is misplaced. A corporate act which constitutes a violation of Section 6(l)(2) of Presidential Decree No. 902-A is one which a corporation purports to the public as its business activity, but is nevertheless beyond the corporate powers provided in the purpose clause of its Articles of Incorporation.

In this case, the purpose clause of MEGAWORLD's Articles of Incorporation reads:

> [The purposes] for which said Corporation is formed are:
>
> **PRIMARY PURPOSE**
>
> a) To invest in, purchase, or otherwise acquire and own, hold, use, sell, assign, transfer, mortgage, pledge, hypothecate, exchange or otherwise dispose of real and personal property of every kind and description, including shares of stock, bonds, debentures, notes, evidence of indebtedness, and other securities and obligations of corporation or corporations, association or associations, domestic or

---

[3] Page 2 of EPD Letter-Order dated 23 April 2013.

> foreign, for whatever lawful purpose or purposes that same may have been organized xxx. (*Amended as of April 30, 1999*)
>
> **SECONDARY PURPOSE**
>
> b) To acquire by purchase, lease, donation or otherwise and to own, use, improve, develop, subdivide, sell, mortgage, exchange, lease, develop and hold for investment or otherwise, real estate of all kinds, and to construct, improve, manage or otherwise dispose of buildings condominiums and other structures of whatever kind, together with their appurtenances; and, to perform, all and everything necessary and proper for the attainment of or in furtherance of this purpose, either alone or in association with other corporations or individuals. (*Amended as of April 30, 1999*)

On the basis of the foregoing purposes, MEGAWORLD's act of entering into a joint venture with the City of Manila to develop and construct the questioned "City Place at Binondo" Condominium and "Lucky Chinatown" Plaza Mall projects, appears to be a legitimate business pursuit and does not violate Section 6(l)(2) of Presidential Decree No. 902-A.[4]

On **10 May 2013**, NESCO filed its Appeal Memorandum, essentially reiterating the allegations in its Complaint, viz:

> Since time immemorial, the Government of the Republic of the Philippines has been the owner of an untitled property called "Cuartel Meisic" xxx[5]
>
> Sometime in 1954, then Pres. Ramon Magsaysay issued Proclamation No. 46, granting the City of Manila the exclusive right to use, as *usufructuary* and *not as owner*, a portion of Cuartel Meisic in Binondo, Manila as site for its school buildings and government offices xxx[6]

---

[4] Page 3 of EPD Letter-Order dated 23 April 2013.
[5] Page 2 of Appeal Memorandum filed 10 May 2013.
[6] Pages 2-3 of Appeal Memorandum filed 10 May 2013.

> Sometime in 2005, however, respondent MEGAWORLD and the City of Manila, in evident conspiracy, cooperation and/or confederation with government officials under the previous GMA administration, hatched a corrupt and plunderous scheme to convert and illegally title the Cuartel Meisic property, first in the name of the City of Manila, and thereafter joint venture it with respondent MEGAWORLD for development into a mixed residential, office/commercial, and mall complex xxx[7]
>
> Presently, the Cuartel Meisic is also the site of the xxx *City Place at Binondo Condominium* and *Lucky Chinatown Plaza Mall* projects xxx which respondent MEGAWORLD and the City of Manila built in bad faith xxx[8]

NESCO also argued on appeal that MEGAWORLD's actions constitute Serious Misrepresentation, precisely in the sense contemplated by Section 6(l)(2) of PD 902-A, because **MEGAWORLD's purpose clause does not authorize it to acquire lands belonging to the public domain**, which is how NESCO characterized the disputed lots in its Complaint, viz:

> Extant from the complaint, the lots over which the subject projects are situated are lands belonging to the public domain. In consequence, the same cannot be the proper object of any agreement between MEGAWORLD and the City of Manila. The lots in question are absolutely outside the commerce of men. On its face, the complaint clearly alleges that respondent MEGAWORLD deliberately misrepresented that it had entered into a lawful joint venture vis-à-vis its "City Place" and "Lucky Plaza" projects and that it can legally develop, sell and lease the same, to the prejudice of the general public.
>
> Accordingly, it is within the competence of the Honorable Commission to revoke the Certificate of Registration of MEGAWORLD in accordance with Section 6(l)(2) of P.D. No. 902-A, which provides:

---

[7] Page 3 of Appeal Memorandum filed 10 May 2013.
[8] Page 5 of Appeal Memorandum filed 10 May 2013.

> Sec. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
>
> xxx xxx xxx
>
> (l) To suspend, or revoke, after proper notice and hearing, the franchise or certificate or registration of corporations, partnerships or associations, upon any of the grounds provided by law, including the following:
>
> xxx xxx xxx
>
> 2. Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public.
>
> In fact, the [Letter-Order] expressly recognized that the sought reliefs by petitioner [NESCO] is within the powers of this Honorable Commission. However, it refused to take cognizance of the case, citing, albeit erroneously, the rule prohibiting collateral attack on title.[9]

On **31 May 2013**, the EPD filed its Reply Memorandum, essentially reiterating the arguments in its Letter-Order and further stating that none of the Commission's enabling laws permit it to determine the validity of land titles, viz:

> The EPD maintains its position that the Commission has no jurisdiction to resolve NESCO's [Complaint].[10]
>
> A careful perusal of NESCO's allegations reveals that while it does not directly seek the cancellation of the questioned titles, the pivotal issue in this case is the validity of the titles of the City of Manila, from which MEGAWORLD derived its title over the Cuartel Meisic property, an issue which is within the exclusive jurisdiction and competence of the regular courts to resolve. The fact that NESCO charges MEGAWORLD with violation of Section 6(l)(2) does not suffice to

---

[9] Page 12 of NESCO's Memorandum on Appeal filed 10 May 2013.
[10] Page 6 of EPD's Reply Memorandum filed 31 May 2013.

confer upon the Commission jurisdiction over the instant case, as the resolution thereof is closely intertwined with the issue of ownership of the subject real property.[11]

In *Bank of Commerce v. Planters Development Bank and Bangko Sentral ng Pilipinas* [G.R. Nos. 154470-71, 24 September 2012], the Supreme Court enunciated that while the very nature of an administrative agency and the raison d'etre for its creation and proliferation dictate a grant of quasi-judicial power to it, the matters over which it may exercise this power must find sufficient anchorage in its enabling law, either by express provision or by necessary implication. Once found, the quasi-judicial power partakes of the nature of a **limited and special jurisdiction**, that is, to hear and determine a class of cases within its peculiar competence and expertise. In other words, the words of the enabling statute are the yardsticks by which a court would measure the quantum of quasi-judicial powers an administrative agency may exercise, as defined in the enabling act of such agency.[12]

Applying the foregoing pronouncement to this case, the EPD finds nothing in the Commission's enabling laws, namely, the Securities Regulation Code, Corporation Code of the Philippines, and Presidential Decree No. 902-A, which authorizes it to determine questions on validity of land titles. Thus, notwithstanding the fact that the reliefs sought by NESCO xxx appear to be well within the powers of the Commission, the same cannot be exercised without overstepping the bounds of the Commission's jurisdiction.[13]

The Department likewise maintains that the reliance on Section 6(l)(2) of Presidential Decree No. 902-A is misplaced. A corporate act which constitutes a violation of Section 6(l)(2) of Presidential Decree No. 902-A is one which a corporation purports to the public as its business activity, but is nevertheless

---

[11] Page 8 of EPD's Reply Memorandum filed 31 May 2013.
[12] Pages 8-9 of EPD's Reply Memorandum filed 31 May 2013.
[13] Pages 9-10 of EPD's Reply Memorandum filed 31 May 2013.

> beyond the corporate powers provided in the purpose clause of its Articles of Incorporation.[14]
>
> NESCO contends that while the Articles of Incorporation of MEGAWORLD empowers the latter to deal with real and personal property, [MEGAWORLD]'s alleged deliberate misrepresentation to the general public that it can validly develop, sell, and lease its *City Place at Binondo Condominium* and *Lucky Chinatown Plaza Mall* projects, is beyond its legitimate business pursuit.[15]
>
> It is well to note that not every alleged illegal act of a corporation or its officers is subject to the oversight powers of the Commission. Where the act or omission complained of does not violate or involve any of the laws enforced by the Commission, the same is not for the latter to entertain.
>
> In any case, even if we adopt NESCO's interpretation of Section 6(l)(2) of Presidential Decree NO. 902-A, the EPD maintains, at the risk of sounding redundant, that is it beyond the authority of the Commission to determine, even provisionally, the character and ownership of the land in question. Considering that **there is no competent evidence on record, such as a final and executory judgment rendered by a court of competent jurisdiction, to prove that the questioned titles over the Cuartel Meisic property are fake**, the dismissal of the instant case is clearly justified by the lack of cause of action.[16] [Emphasis supplied]

On **3 June 2013**, MEGAWORLD filed its Reply Memorandum, where it concurred with the EPD as to the Commission's lack of jurisdiction, because the Complaint is really a collateral attack on the validity of land titles within the cognizance of the regular courts, viz:

> The EPD correctly ruled that the SEC does not have jurisdiction over the Complaint as the action is a collateral attack on certificates of title. The instant case

---

[14] Page 11 of EPD's Reply Memorandum filed 31 May 2013.
[15] Pages 12-13 of EPD's Reply Memorandum filed 31 May 2013.
[16] Page 13 of EPD's Reply Memorandum filed 31 May 2013.

> is the wrong action filed by the wrong party in the wrong court.[17]
>
> NESCO did not, for it cannot, rebut the EPD's holding that NESCO's prayer for revocation of the SEC certificate of registration **requires an inquiry into the validity of the questioned titles which constitutes a collateral attack on the certificates of title and is a task the SEC is not authorized to perform.** That is the main point of the EPD. In other words, the main issue presented by the Complaint is whether the questioned certificates of title are valid or spurious. The EPD correctly recognized that the Complaint is the wrong action filed in the wrong court.[18]
>
> Clearly, if an action may be filed attacking the validity of the *torrens* titles, it should have been filed within one year from decree of registration through a direct action, not by collateral attack, with the proper regional trial court, by the Republic of the Philippines, through the Office of the Solicitor General.[19]

Hence, this Appeal.

Serious Misrepresentation has a technical meaning. The key phrase in Section 6(l)(2) of P.D. No. 902-A is "*as to what the corporation can do* or *is doing*" and limits the serious misrepresentation to acts that exceed the corporate purpose, i.e. ultra vires.

As correctly pointed out by the EPD in its Letter-Order and in its Reply Memorandum, "a corporate act which constitutes a violation of Section 6(l)(2) of [PD 902-A] is one which a corporation purports to the public as its business activity, but is nevertheless beyond the corporate powers provided in the purpose clause of its Articles of Incorporation."

The EPD quoted MEGAWORLD's purpose clause, authorizing the latter to deal in "real and personal property of every kind and description," and ruled that MEGAWORLD's joint venture with the City of Manila "appears to be a legitimate business pursuit," especially considering "there is no competent evidence on record xxx that the questioned titles xxx are fake."

---

[17] Page 2 of MEGAWORLD's Reply Memorandum filed 3 June 2013.
[18] Page 4 of MEGAWORLD's Reply Memorandum filed 3 June 2013.
[19] Page 6 of MEGAWORLD's Reply Memorandum filed 3 June 2013.

The validity of land titles is outside SEC Jurisdiction. As correctly pointed out by the EPD and by MEGAWORLD in their respective Reply Memoranda, the validity of land titles is outside the jurisdiction of the Commission. The Commission cannot determine if the titles are fake, nor can it determine if the land is inalienable. None of the laws enabling the Commission authorize it to rule on land titles. None of the laws enforced by the Commission deal with subject of land titles. Moreover, the Commission is not the implementing agency of the Property Registration Decree.

Clearly, this matter is outside the jurisdiction of the Commission.

WHEREFORE, premises considered, the instant Appeal is **DISMISSED**. The EPD Letter-Order dated 23 April 2013, having correctly stated the reasons for dismissal, is affirmed *in toto*.

SO ORDERED.

Pasay City, Philippines; 13 April 2018.

TERESITA J. HERBOSA
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

EMILIO B. AQUINO
Commissioner