Republic of the Philippines
Department of Finance
Securities and Exchange Commission

IN THE MATTER OF:
CLAVER MINERAL DEVELOPMENT CORPORATION (SEC REG. NO. AS95001246)

PROSPERO A. PICHAY, JR., FE M. LIGTAS, TEOFRANCO M. MALLARI, and LOLITA D. BOLAYOG, represented by ATTY. PORTIA D. FLORES-DIESTA,
Respondents-Appellants,

- *versus* -

IRENEO L. CEZAR,
Petitioner-Appellee.
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SEC *En Banc* Case No. 05-16-401

DECISION

This resolves the pending *Appeal*[1] filed, on 25 May 2016, by Prospero A. Pichay, Jr., Fe M. Ligtas, Teofranco M. Mallari, and Lolita D. Bolayog (**Appellants**) seeking to reverse and set aside the *Order* dated 06 May 2016 (**Assailed Order**) of the Company Registration and Monitoring Department (**CRMD**), the dispositive portion is read as follows:

> "WHEREFORE, premises considered, the Certificate of Approval of Increase of Capital Stock and the Certificate of Filing of Amended Articles of Incorporation (amending Articles III and VII thereof) both approved on 23 December 2014 and the Certificate of Approval of Increase of Capital Stock and the Certificate of Filing of Amended Articles of Incorporation (amending Article VII thereof) approved on 02 October 2015 are hereby REVOKED."

The Facts and Proceedings

Claver Mineral Development Corporation (**CMDC**) is a domestic corporation duly registered with the Commission on 10 February 1995 under Company Registration No. ASO95-001246. Its principal office is at P. Burgos Street, Butuan City. Its primary purpose is to prospect for, conduct geological, geophysical and all kinds of exploration work; mine; extract: x x x as provided in its Articles of Incorporation.

On 23 December 2014, the Commission, through CRMD, approved CMDC's application for increase of authorized capital stock (ACS) from Ten Million Pesos

[1] Notice of Appeal and Memorandum of Appeal dated 24 May 2016.

(Php 10,000,000.00)[2] to One Hundred Million Pesos (Php 100,000,000.00)[3]. Then, on 02 October 2015, CRMD again approved CMDC's application for another increase of its ACS from One Hundred Million Pesos (Php 100,000,000.00) to One Hundred Fifty Million Pesos (Php 150,000,000.00)[4].

On 05 February 2016, Ireneo Ligtas Cezar (**Cezar**) filed a *Complaint-Affidavit*[5] and *Supplemental-Complaint*[6] alleging, among others, that he is a stockholder and officer of CMDC. He claims that Appellants committed fraud when they submitted a *Certificate of No Intra-corporate Dispute*[7] despite the existence of intra-corporate cases pending before the courts. In his complaint, he cited the case entitled *"Dominador P. Calonia, et al. vs. Hervic Calo, et al., CA-G.R. No. SP No. 05024-MN"* (**Calonia vs. Calo**) involving an intra-corporate controversy within CMDC.

Thereafter, CRMD, pursuant the 2006 SEC Rules of Procedure (2006 Rules), required the parties to submit their respective answers/position papers and conducted clarificatory conferences to shed light on the matter. CRMD also discovered that CMDC filed multiple General Information Sheets (GIS) with different set of officers for the years of 2013-2015. These GISs were filed with the Commission's Head office and SEC Cagayan de Oro Extension Office (SEC-CDO). It further appears that there are three (3) groups claiming to be legitimate directors and officers of CMDC, to wit: 1.) Ireneo L. Cezar, et al. (**Cezar Group**); 2.) Fe M. Ligtas/Prospero Pichay, et al. (**Ligtas/Pichay Group**); and 3.) Niceforo S. Calo, et al. (**Calo Group**). After evaluating the facts and evidence presented, CRMD issued Assailed Order which ruled that:

> "We find that the Complaint is meritorious.
>
> x x x
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> Moreover, a verification from the SEC Cagayan de Oro Extension Office on the records of the corporation with SEC Registration No. "CS200701881", it was found out that the group of Ms. Ligtas filed an application for change of name from CLAVER MINERAL DEVELOPMENT CORPORATION (with SEC Registration No. CS200701881), which was approved by the Extension Office on 16 April 2014. The original Certificate of Filing of Amended Articles of Incorporation remains unclaimed. It appears that the group of Ms. Ligtas filed for change of name twice: one at the SEC Cagayan de Oro Extension Office and one at the SEC Main Office; making the Commission believe that they are the legitimate directors and officers of the CMDC by confusing CMDC with the other corporation, HENHAO EQUIPMENTS CORPORATION.

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[2] One hundred thousand (100,000) shares with par value of Php 100.00 per share.

[3] One million (1,000,000) shares with par value of Php 100.00 per share.

[4] One million five hundred thousand (1,500,000) shares with par value of Php 100 per share.

[5] Dated 01 February 2016, Annex "B" of the Appeal.

[6] Dated 08 February 2016, Annex "C" of the Appeal.

[7] One of the documentary requirements for the application of an increase of authorized capital stock - http://www.sec.gov.ph/services-2/company-2/amendment/.

The increase in capital stock was approved by CRMD considering that the group of Ms. Ligtas was able to comply with all the required documents and there was no Temporary Restraining Order issued by the Court against the Commission restraining the same to approve any application filed by the subject corporation. The CRMD relied on the Secretary's Certificate submitted by the group of Ms. Ligtas certifying that the corporation had no intra-corporate issue.

In a series of clarificatory conferences conducted by CRMD with the three (3) sets of directors and officers of the subject corporation, the groups of Calo and Cezar manifested that there is a pending intra-corporate dispute between the two (2) groups, which is already the subject of on-going proceedings before the court. Ms. Ligtas had knowledge of such intra-corporate case as evidenced by her filing of a Motion for Intervention.

Such act of Ms. Ligtas, et al. of submitting documents with false statements is tantamount to actual fraud with the intention to deceive the Commission, considering that the SEC heavily relies on the said submissions to issue the Certificates, SEC Admin. Case No. 07-10-120 explains fraud as follows:

XXX

Based on the foregoing, it appears that the increase in authorized capital stock and the amendments to the Articles of Incorporation approved by the Commission on 23 December 2014 and 02 October 2015 are tainted with fraud and are filed and approved while there was an existing intra-corporate dispute among the directors and officers of CLAVER MINERAL DEVELOPMENT CORPORATION.

Hence, the Directors' Certificate submitted as part of the application for the increases of the capital stock cannot be relied upon considering the existence of an intra-corporate controversy involving the subject corporation. Likewise, said Certification is not reliable basis of compliance with the required votes of the directors and the stockholders as prescribed in Section 16 in relation to Section 38 of the Corporation Code of the Philippines."

Aggrieved, Appellants filed that instant appeal. They argue that Petitioner-Appellee did not present substantial evidence for the CRMD to revoke the certificates of approval for the increase of its ACS.[8] They further claim that CRMD has no jurisdiction to resolve the issue of fraud[9] in CMDC's application for increase of ACS because this was transferred to the regular court pursuant to Section 5.2 of the Securities Regulation Code[10] (SRC).[11] They assert that there is

[8] Paragraphs 17-21 of the Memorandum of Appeal.
[9] Section 5(a) of P.D. No. 902-A.
[10] R.A. No. 8799.
[11] Paragraphs 22-26 of the Memorandum of Appeal.

no intra-corporate dispute in so far as Appellants are concerned because the case of *Calonia vs. Calo* is limited between the Calo and Cezar Groups and does not bind and affect Appellants.[12] Appellants argue that Appellee has no cause of action because he failed to present the assailed certificates on non-existence of corporate dispute which is in violation of the Actionable Documents Rule[13].[14] Appellants further contend that the case of *Calonia vs. Calo* was no longer a dispute at the time CMDC's increase of ACS was approved because the former was already promulgated on 17 December 2014, while the latter was applied on 23 December 2014.

In its *Reply Memorandum*[15], Appellee counters that Appellants' challenge on the CRMD's lack of jurisdiction to revoke its approval of increase of ACS is a mere afterthought and should not be given any consideration.[16] He further contends that the rule on actionable documents does not apply to cases where the adverse party does not appear to be a party to the instrument.[17] Also, he avers that Ms. Fe Ligtas was aware of the case of *Calonia vs. Calo* which involves an intra-corporate controversy.[18] Appellee further claims that said case has been resolve on 17 December 2015 and the application for the increase in capital was on 23 December 2014.

Issue

The issue to be resolved is whether or not Respondent-Appellants' committed fraud when they submitted a notarized *Secretary's Certificate of No Intra-corporate Dispute* in procuring two of CMDC's Certificates of Approval of Increase of Capital Stock and Certificates of Filing of Amended Articles of Incorporation dated 23 December 2014 and 02 October 2015.

Ruling

We find the instant appeal bereft of merit.

Among the requirements in applying for an increase of ACS is a notarized *Secretary's Certificate on no pending case of Intra-corporate Dispute.* In the said requirement, the Corporate Secretary states under oath that there is no action or proceeding has been filed or is pending before any Court involving an intra-corporate dispute and/or claim by any person or group against the Board of Directors, individual directors and/or major corporate officers of the Corporation as its duly elected and/or appointed directors or officers or vice versa. The essence of this requirement is to ensure the required majority vote of

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[12] Paragraphs 27-39 of the Memorandum of Appeal.

[13] Rule 8, Section 7 of the Rules of Court which provides that when the cause of action is anchored on a document, the genuineness or due execution of the instrument shall be deemed impliedly admitted unless the defendant, under oath, specifically denies them, and sets forth what he claims to be the facts.

[14] Paragraphs 40-45 of the Memorandum of Appeal.

[15] *Filed on 10 June 2016, dated 07 June 2016.*

[16] Page 3 of the Reply Memorandum.

[17] Page 4 of the Reply Memorandum.

[18] Pages 5-6 of the Reply Memorandum.

the corporation and the assent of 2/3 vote of its stockholders are complied pursuant to Sections 16[19] and 38[20] of the Corporation Code (**Code**).

Section 5 of Presidential Decree (P.D.) No. 902-A defines "intra-corporate controversies" as:

> a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission;
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> b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity;
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> c) Controversies in the election or appointments of directors, trustees, *officers or managers of such corporations, partnerships or* associations.[21]

In *Aguirres II vs. FQB+7, Inc.*[22], the Supreme Court further expounded what constitutes an intra-corporate dispute, to wit:

> "Meanwhile, jurisprudence has elaborated on the above definitions by providing tests in determining whether a controversy is intra-corporate. *Reyes v. Regional Trial Court of Makati, Br. 142* contains a comprehensive discussion of these two tests, thus: A review of relevant jurisprudence shows a development in the Court's approach in classifying what constitutes an intra-corporate controversy. Initially, the main consideration in determining whether a dispute constitutes an intra-corporate controversy was limited to a consideration of the intra-corporate relationship existing between or among the parties. The types of relationships embraced under Section 5(b) x x x were as follows:

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[19] Section 16. Amendment of Articles of Incorporation. – Unless otherwise prescribed by this Code or by special law, and for legitimate purposes, any provision or matter stated in the articles of incorporation may be amended by a majority vote of the board of directors or trustees and the vote or written assent of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, without prejudice to the appraisal right of dissenting stockholders in accordance with the provisions of this Code, or the vote or written assent of at least two-thirds (2/3) of the members if it be a non-stock corporation.

[20] Section 38. Power to increase or decrease capital stock; incur, create or increase bonded indebtedness. – No corporation shall increase or decrease its capital stock or incur, create or increase any bonded indebtedness unless approved by a majority vote of the board of directors and, at a stockholder's meeting duly called for the purpose, two-thirds (2/3) of the outstanding capital stock shall favor the increase or diminution of the capital stock, or the incurring, creating or increasing of any bonded indebtedness. Written notice of the proposed increase or diminution of the capital stock or of the incurring, creating, or increasing of any bonded indebtedness and of the time and place of the stockholder's meeting at which the proposed increase or diminution of the capital stock or the incurring or increasing of any bonded indebtedness is to be considered, must be addressed to each stockholder at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally.

[21] Vitaliano N. Aguirres II, at al. vs. FOB+7, Inc. G.R. No. 170770, 09 January 2013.

[22] Ibid.

> a) between the corporation, partnership, or association and the public;
> b) between the corporation, partnership, or association and its stockholders, partners, members, or officers;
> c) between the corporation, partnership, or association and the State as far as its franchise, permit or license to operate is concerned; and
> d) among the stockholders, partners or associates themselves. xxx
>
> The existence of any of the above intra-corporate relations was sufficient to confer jurisdiction to the SEC now the RTC, regardless of the subject matter of the dispute. This came to be known as the relationship test.
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> However, in the 1984 case of *DMRC Enterprises v. Esta del Sol Mountain Reserve, Inc.*, the Court introduced the nature of the controversy test. We declared in this case that it is not the mere existence of an intra-corporate relationship that gives rise to an intra-corporate controversy; to rely on the relationship test alone will divest the regular courts of their jurisdiction for the sole reason that the dispute involves a corporation, its directors, officers, or stockholders. We saw that there is no legal sense in disregarding or minimizing the value of the nature of the transactions which gives rise to the dispute.

In the instant case, CRMD approved CMDC's application for the increase of ACS and amendments of AOI on the basis that latter has completely and faithfully complied with all the requisites provided by law and the Commission's rules.[23] However, Appellee reported to the Commission that there are intra-corporate disputes pending before the courts involving CMDC which casts doubt to CMDC's application. Thus, the submission of a *Secretary's Certificate on no pending case of Intra-corporate Dispute* become an issue.

The existence of an Intra-corporate dispute was further confirmed when CRMD conducted clarificatory conferences with the three (3) contending groups of CMDC. The Calo and Cezar groups manifested that there is a pending intra-corporate case before the courts.

Likewise, the Commission's records reveal that there are multi-filings of CMDC's GIS from the three (3) contending groups. In fact, CRMD in an *Order* dated 10 February 2016, declared these GISs as "DISPUTED" pursuant to SEC Office Order No. 242, Series of 2013 entitled "*Guidelines for Applications for Amendment of the Articles and/or By-laws where there is more than one set of General Information Sheet (GIS) is filed with the Commission*" (**SEC Order No. 242-2013**) which provides that:

> "4. CMD in monitoring compliance of corporations with the reportorial requirements must ensure that there is no double filing

[23] Page 4 of the Assailed Order.

> of GIS. If verification shows that there are filings by two different groups, the monitoring shall not proceed. A "Clarificatory Conference" shall then be held with the two different groups to determine the cause of the double-filing. If the case indicates **an intra-corporate dispute or question of legitimacy between the directors, officers, and stockholders of the corporation, CMD will recommend** to the Corporate Filings and Records Division (CFRD) of CRMD and Management Information System Division of Economic Research and Information Department (ERID) **the marking of GIS in question as "DISPUTED"**. CMD shall also advise the Central Receiving and Records (CRRD) of the Human Resource and Administrative Department (HRAD) of the double filing of GIS of such corporation."

Undeniably, (1) the complaint of Appellee; (2) the information from the Cezar and Calo groups that there is a pending intra-corporate dispute before the courts concerning CMDC; and (3) the multiple filings of CMDC's GIS indicate the presence of an intra-incorporate controversy within CMDC. Thus, the Commission agrees with the CRMD that Appellants submitted a false or inaccurate *Secretary's Certificate on no pending case of Intra-corporate Dispute* which is one of the essential requirements for the approval of an increase of ACS and amendment to an AOI.

Moreover, SEC Order No. 242-2013 provides that:

> "6. Where the applicant cannot submit the requirements under (2) and (3), or upon verification by CRMD, **it appears that there is more than one set of GIS**, or that the Commission had received *timely* ***written notice that there is a claim and/or counterclaim*** **by two groups or persons indicating an intra-corporate dispute** or question as to who are the legitimate stockholders, directors and officers of the corporation, **CRMD shall defer any action on the application.**
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> 7. In the case of an **intra-corporate dispute pending or already the subject of on-going proceedings before any court, CRMD shall advise the applicant that its application is deferred until after final resolution of said dispute or proceedings**."

In conclusion, we address the remaining issues raised by Appellants for a complete determination of the instant case, to wit:

First, Appellants' argue that the Commission has no jurisdiction over the issue of fraud in the instant case. Such argument is without merit. It is expressly provided in Section 38 of the Code that any increase or decrease in the capital stock of a corporation shall require the prior approval of the Commission. Thus, it is within the power of the Commission to evaluate and determine if CMDC's application for increase of capital stock has fully complied with requisites provided by law. In the instant case, Appellants misrepresented to the Commission when they submitted a *Secretary's Certificate of No Intra-corporate*

Dispute even though there exist an intra-corporate controversy within CMDC based on the evidence presented.

Second, Appellants contend that Appellee has the burden of proof based on substantial evidence to show the presence of fraud in their application for the increase of CMDC's capital stock. We are not convinced. Appellee's information of the presence of an intra-corporate dispute within CMDC was pivotal in determining Appellants' compliance with the requisites for approval of increase in capital stock. It was due to Appellee's complaint that CRMD, upon verification of the Commission's records, was able to determine that Appellant submitted an untruthful *Secretary's Certificate of No Intra-corporate Dispute.*

Third, Appellants claim that there is no intra-corporate dispute because the case of *Calonia vs. Calo* is limited between the Calo and Cezar groups. We are not persuaded. The mere presence of an intra-corporate dispute casts doubt on corporation's board of directors and stockholders' approval for the increase of its capital stock. In such case, it cannot be said that the corporation has complied with the needed number of votes as provided in Section 38 of the Code.

Fourth, Appellants argue that Appellee did not present the assailed certificates resulting in violation of the Actionable Documents Rule. Such argument is untenable. The Actionable Documents rule is not applicable when the adverse party does not appear to be a party to the instrument.[24] In this case, Appellee was not the one who executed the false secretary certificate which attested that there is no intra-corporate dispute. Besides, the assailed certificates can be easily verified by CRMD with the Commission's records.

Based on the foregoing, CRMD is correct in revoking CMDC's *Certificate of Approval of Increase of Capital Stock* and *Certificate of Filing of Amended Articles of Incorporation (amending Articles III and VII thereof)* both approved on 23 December 2014; and *Certificate of Approval of Increase of Capital Stock* and *Certificate of Filing of Amended Articles of Incorporation (amending Articles VII thereof)* both approved on 02 October 2015.

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[24] Section 8. How to contest such documents. – When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath specifically denies them, and sets forth what he claims to be the facts, but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused.

WHEREFORE, *premises considered, the instant appeal is hereby* **DENIED** for lack of merit. The Company Registration and Monitoring Department's *Order* dated 06 May 2016 is hereby **AFFIRMED**.

SO ORDERED.

Pasay City; 05 January 2017.

TERESITA J. HERBOSA
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG*
Commissioner

BLAS JAMES G. VITERBO
Commissioner

EMILIO B. AQUINO
Commissioner

*On Leave