Republic of the Philippines
Department of Finance
Securities and Exchange Commission

IN THE MATTER OF
AZ 17/31 REALTY, INC.,
Respondent-Appellant,

- versus -

SEC *En Banc* Case No. 07-16-408

AZUCENA LOCSIN-GARCIA,
Complainant-Appellee.
x----------x

DECISION

Pending before the Commission *En Banc* is an *Appeal*[1] filed on 28 June 2016 by AZ 17/31 Realty, Inc. (**Appellant**) assailing the *Order* dated 30 May 2016 (**Assailed Order**) issued by the Company Registration and Monitoring Department (**CRMD**). The pertinent portion of the disposition of the Assailed Order reads as follows:

> "WHEREFORE, premises considered, the Certificate of Registration of AZ 17/31, Realty Inc. (sic) registered on 23 April 2008, under SEC Registration No. CS200805443 is hereby REVOKED."

Appellant is a stock corporation duly registered with the Commission on **23 April 2008** under Company Registration No. CS200805443.[2] Its primary purpose is to:

> "To acquire by purchase, donation, lease 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, whether improve, manage or otherwise dispose of buildings, houses, apartment, and other structures of whatever kind, together with their appurtenances."[3]

Its incorporators are the following: 1.) Antonio de Zuzuaregui Jr.; 2.) Enrique de Zuzuaregui; 3.) **Pacita Javier**; 4.) Antonette S. Rosca; 5.) Anthony de Zuzuaregui; 6.) Antonette de Zuzuaregui; and 7.) Maria Edna de Zuzuaregui.[4]

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[1] Dated 14 June 2016.
[2] Appellant's Certificate of Incorporation.
[3] Appellant's Articles of Incorporation.
[4] Ibid.

Azucena Locsin-Garcia (**Appellee**) is the complainant who initiated a complaint for the revocation of Appellant's Certificate of Registration.

Factual Antecedents

In a *Letter* dated 09 January 2016, Appellee filed a complaint to revoke Appellant's Certificate of Registration with the Commission's Enforcement and Investor Protection Department (EIPD). Appellee alleges that one of Appellant's incorporators, Pacita Javier, had long been deceased at the time of Appellant's incorporation. She claims that Pacita Javier died on 17 August 2004, whereas the Appellant was incorporated in 2008. Thus, Appellee prays for the revocation of Appellant's certificate of incorporation on the ground of fraud.

Acting on the letter-complaint, EIPD verified the death of Pacita Javier by obtaining a copy of the latter's death certificate with the National Statistics Office[5] (NSO). The Death Certificate with Registry No. 2004-483 revealed that Pacita Javier, at the age of 90 years old, died on 17 August 2004 at the Cardinal Santos Medical Center, Greenhills, San Juan, Metro Manila. The informant was Enrique de Zuzuaregui. Thereafter, EIPD referred the complaint to the CRMD since the latter has jurisdiction over the subject matter.

Then, CRMD directed the Appellant to file its *Answer* to the Appellee's complaint. On 23 March 2016, Appellant filed its *Answer* and on 14 April 2016, it filed its *Supplemental Answer,* refuting all the allegations in the complaint and presenting its affirmative defenses.

On 30 May 2016, CRMD issued the Assailed Order, which states that:

> "Juridical capacity is the fitness to be the subject of legal relations, while Capacity to Act is the capacity to do acts with legal effects. Juridical capacity can exist without the capacity to act, but the existence of the latter implies that of the former. They do *not always coincide. Hence, upon a person's death, his capacity to enter into an* incorporating agreement is likewise extinguished. Considering, therefore, that **Pacita Javier passed away in the year 2004, then her capacity to effectively enter into any legal relation was likewise extinguished at the same time. It is legally impossible, therefore, for her to be part of the incorporation of Respondent Corporation in the year 2008.**
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> That the incorporators of the Respondent Corporation had no intention to deceive or defraud the public runs counter to their acts. **Since Pacita Javier was already deceased at the time of incorporation, someone must have signed for and in behalf of a dead person. It was, thus, made to appear that Pacita Javier was**

[5] Now the Philippine Statistics Office.

still alive for the purpose of deceiving the Commission into approving the Articles of Incorporation.

Respondent Corporation's intent to deceive is bolstered by the fact that **one of the incorporators, Enrique Zuzuaregui is the informant of the death of Pacita Javier**, as stated in the NSO Death Certificate. A comparison of the signatures of Enrique in the Articles of Incorporation and the Death Certificate shows that they are the same.

Hence, **it cannot be denied that fraud was committed in procuring Petitioner's (Appellant) Certificate of Incorporation.** Had the Commission been aware of such falsities, the registration of the Articles of Incorporation would not have been approved.

Likewise, Respondent Corporation did not deny the fact that Pacita Javier was already deceased at the time of incorporation; hence, such is deemed admitted.

In view of the fraud and misrepresentation in the procurement of the certificate of registration, the same is rendered non-compliant with the requirements of the Corporation Code on incorporation. x x x"

Aggrieved, Appellant filed the instant appeal.

Appellant claims that the other incorporators are unaware of the fraud which was perpetrated only by Antonio de Zuzuaregui, when the latter included Pacita Javier as one of the incorporators of the corporation.[6] Appellant contends that they should not be burdened or faulted by the misrepresentations of Antonio de Zuzuaregui since they have no participation whatsoever on the alleged fraud.[7] Appellant also argues that since Antonio de Zuzuaregui and Pacita Javier already passed away, there is no compelling reason to go after the corporation administratively.[8] Appellant claims that there are other businesses that will be disenfranchised if the subject corporation would be revoked.[9] Appellant claims that it is one of the top taxpayers in Quezon City and of the National Government.[10] It avers that the penalty of revocation is too harsh and extreme of a punishment.

Appellant further alleges that CRMD committed following errors[11] in issuing the Assailed Order:

1. The CRMD erred in ordering the revocation of Appellant's certificate of incorporation;

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[6] Page 5 of the Memorandum of Appeal.
[7] Page 6 of the Memorandum of Appeal.
[8] Page 7 of the Memorandum of Appeal.
[9] Id.
[10] Id.
[11] Page 3 of the Memorandum of Appeal.

2. The CRMD erred when it ruled that the rules against Forum Shopping should be applied liberally in this case as strict application would not work to the best interest if the public;
3. The CRMD erred when it did not address the issue on whether or not Complainant-Appellee Azucena Locsin-Garcia has a cause of action against Appellant;
4. The CED and not the CRMD is the one who has technical expertise and specialized knowledge necessary in determining the existence of facts relevant to the case.

On the other hand, Appellee contends that Appellant admitted that, despite the death of Pacita Javier on 17 August 2004, it still included the latter as one of their incorporators.[12] This constitutes falsification and misrepresentation in Appellant Articles of Incorporation (**AOI**), which is considered as fraud in the procurement of the latter's certificate of registration.[13] Appellee argues that the remaining incorporators cannot simply dissociate themselves from the fraud committed since they ought to know that their grandmother, Pacita Javier, is already deceased at the time of Appellant's incorporation. Appellee further claims that Appellant falsified its AOI and By-laws by forging the signature of the deceased Pacita Javier.[14] Thus, Appellee prays for the denial of the instant appeal.

Issue

The main issue to be resolved is whether or not the CRMD is correct in revoking Appellant's Certificate of Incorporation on the ground of fraud in procuring the latter's certificate of incorporation.

Ruling

Before we proceed with the merits of the case, there are some procedural matters that were raised by Appellant that are needed to be resolve.

As to the issue on non-forum shopping, Appellant argues that Appellee did not present a Certification against Non-forum shopping, which is a fatal defect.[15] In *Diamond Taxi vs. Llamas*[16], the Supreme had the occasion to rule that:

> "Indeed, while the **requirement as to the certificate of non-forum shopping is mandatory**, this **requirement should not, however, be interpreted too literally**

[12] Paragraph 11 of the Reply Memorandum.
[13] Id.
[14] Paragraphs 13-15 of the Reply Memorandum.
[15] Pages 10-14 of the Memorandum of Appeal.
[16] G.R. No. 190724, March 12, 2014.

and thus defeat the objective of preventing the undesirable practice of forum-shopping."

We agree with CRMD that the instant case calls for a liberal interpretation of the rule on forum shopping. As sufficiently explained by CRMD, a revocation case does not involve the determination of rights and interest of the parties, but the exercise of the Commission's regulatory powers.[17] The CRMD further ruled that it would not be fair to allow a corporation to exist, if its franchise is under suspicion. Thus, there is a compelling reason for the CRMD to relax the rule which is the Commission's mandate to protect the investing public.

As to the issue on the presence of Appellee's cause of action, Appellant contends that Appellee is not a real party in interest, hence, the complaint states no cause of action.[18] A "*real-party-in-interest*" is "the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit".[19] However, as above-stated, this is a revocation case and the Commission is merely exercising its regulatory powers. Hence, it is immaterial if the Appellee is a *real-party-in-interest* or not.

As to the issue on CRMD's jurisdiction, Appellant claims that it should be the Commission's Compliance and Enforcement Department (**CED**) that has jurisdiction over the instant case and not the CRMD, as provided in SEC Resolution No. 235, series of 2002.[20] This policy is no longer applicable in light of SEC Resolution No. 359, series of 2010, wherein its states that:

> "RESOLVED, To AUTHORIZE the **Company Registration and Monitoring Department to revoke**, after complying with due process, Certificates of Incorporation of registered partnerships or corporations on the following grounds:
> x x x
>
> 5. **If any of the incorporators is already deceased at the time of incorporation**;
> x x x
>
> 7. If any of the incorporators **submitted spurious or falsified documents to prove compliance with the requirements for registration**; and x x x"

We now resolve the merits of the instant appeal.

Civil personality is extinguished by death.[21] Civil personality is merely the external manifestation of either *juridical capacity* and *capacity to act.*[22] *"Juridical capacity"* is the

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[17] Page 3 of the Assailed Order.

[18] Pages 14-15 of the Memorandum of Appeal.

[19] Salonga v. Warner Barnes & Co., G.R. No. L-2246, January 31, 1951, 88 Phil. 125.

[20] Pages 15-16 of the Memorandum of Appeal.

[21] Article 42, New Civil Code.

fitness to be the subject of legal relations, while *"capacity to act"* is the power to do acts with legal effects.[23]

In *Gochan and Sons vs. Heirs of Baba*[24], the Supreme Court ruled that contracting parties must be juristic entities at the time of the consummation of the contract. Stated otherwise, **to form a valid and legal agreement it is necessary that there be a party capable of contracting and a party capable of being contracted with.** Hence, **if any one party to a supposed contract was already dead at the time of its execution, such contract is undoubtedly simulated and false and therefore null and void** by reason of its having been made after the death of the party who appears as one of the contracting parties therein. The death of a person terminates contractual capacity.

In this connection, the articles of incorporation (charter) of a corporation is a contract between three parties: (a) between the State and the corporation; (b) between the stockholders and the State; and (c) between the corporation and the stockholders.[25] On the other hand, By-laws are relatively permanent and continuing rules of action adopted by the corporation for its own government and that of the individuals composing it and having the direction, in whole and in part, in the management and control of its affairs and activities.[26]

Relative thereto, Section 6 (l), sub-paragraph 1 of P.D. No. 902-A, provides that the Commission has exclusive jurisdiction over actions for revocation/cancellation of the primary franchise or certificate of registration of a corporation, on the following grounds: "1.) *Fraud in procuring its certificate of registration; x x x*".

The fraud mentioned in Section 6, (l), sub-paragraph 1 of P.D. No. 902-A as one of the grounds for revocation of a certificate of registration of a corporation, partnership or association refers to fraud attendant in the registration of the corporation, partnership or association and the same must be contained or connected with the documents and/or papers presented to the Commission for the registration of the said corporation, partnership or association[27].

In the instant case, the Appellee presented evidence that Pacita Javier, one of Appellant's incorporators, was already deceased at the time AZ 17/31 Realty, Inc. was incorporated on 23 April 2008. The Death Certificate of Pacita Javier with Registry No. 2004-483 clearly states that she died on 17 August 2004. This fact was further confirmed by EIPD when the latter verified the same with the NSO.

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[22] 2 Sanchez Roman 114-147.

[23] Article 37, New Civil Code.

[24] Gochan and Sons Realty Corp. v. Heirs of Raymundo Baba, 456 Phil. 569, 578, (2003).

[25] Handbook on Private Corporations, 2009 edition, Lucila Decasa, page 27.

[26] Id. page 67.

[27] In the matter of Silvermoon Security & Investigation Agency, Inc., et. al., SEC Case No. 12-05-99 citing In the matter of Charlyn Marketing Enterprise, SEC Case No. 03-05-49.

Moreover, the fact of the death of Pacita Javier on 17 August 2004 was never denied nor disputed by Appellant in the CRMD proceedings. Applying Section 11-8 of the 2006 SEC Rules of Procedure (**2006 SEC Rules**) which provides that the findings of fact by the Operating Department shall not be disturbed by the Commission *En Banc* unless serious errors of fact have been committed. We will accept the fact of death of Pacita Javier before the filing of Appellant's AOI with CRMD as true.

Considering that Pacita Javier died in 2004, it would be impossible for her to affix her signature on Appellant's AOI and By-laws at the time of incorporation in 2008. However, there were signatures affixed above the name of Pacita Javier in Appellant's AOI and By-laws. Clearly, these signatures are not those of Pacita Javier. Thus, there is fraud in the procurement of Appellant's Certificate of Incorporation.

As for Appellant's arguments that the other incorporators are unaware of the fraud committed, we find no merit on the same. Appellant's other incorporators namely: Enrique de Zuzuaregui, Antonette S. Rosca, Anthony de Zuzuaregui, Antonette de Zuzuaregui and Maria Edna de Zuzuaregui could not feign ignorance that they are unaware of the death of Pacita Javier, who is their grandmother. In fact, Appellant admitted in its appeal that the deceased Pacita Javier was included as one of its incorporators, to wit:

> " x x x **Also, while it is true that at that time of incorporation of AZ 17/31 Realty, Inc., her mother, Pacita Javier was already dead, her inclusion in the roster of incorporators was intended by Antonio** – not for the purpose of a complying with the required number of five (5) incorporators to form a corporation as there are seven (7) incorporators but rather to perpetuate the memory of her late mother he dearly loved.
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> **Admittedly, this is incorrect**, but what can the other incorporators do, as they, aside from being obedient and loyal children to their father, only own nominal shares in the company, and therefore, they cannot outvote and overturn the will fo the latter."

As above-stated, the AOI and By-laws are agreements between of all of the incorporators of a corporation. Thus, it is illogical to claim that these remaining incorporators could not know of the death of Pacita Javier. Since Appellant submitted simulated and false AOI and By-laws, we agree with CRMD's action to revoke Appellant's Certificate of Incorporation.

WHEREFORE, premises considered, the instant appeal is hereby **DENIED** for lack of merit. CRMD's *Order* dated 30 May 2016 is hereby **AFFIRMED.**

Let a copy of this Decision be furnished to the Company Registration and Monitoring Department for proper notation and action.

SO ORDERED. 10 August 2017

TERESITA J. HERBOSA
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner

EMILIO B. AQUINO
Commissioner