



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

CARE BEST INTERNATIONAL, INC.,
Petitioner,

versus

G.R. No. 215510

SECURITIES AND EXCHANGE COMMISSION
AND ITS COMPLIANCE AND ENFORCEMENT
DIVISION,
Respondents.

ENTRY OF JUDGMENT

This is to certify that on March 16, 2015 a resolution rendered in the above-entitled case was filed in this Office, the dispositive part of which reads as follows:

"x x x x

After a judicious review of the records, the Court resolves to **DENY** the instant petition and **AFFIRM** the September 13, 2013 Decision and November 17, 2014 Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 104364 for failure of Care Best International, Inc. (petitioner) to show that the CA committed any reversible error in upholding the ruling of the Securities and Exchange Commission revoking its Certificate of Registration on the ground of fraud.

x x x x

SO ORDERED."

and that the same has, on October 5, 2015 become final and executory and is hereby recorded in the Book of Entries of Judgments.

Manila, Philippines.

Clerk of Court:

By:

36489.0124



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated March 16, 2015 which reads as follows:

“G.R. No. 215510 (Care Best International, Inc. v. Securities and Exchange Commission and its Compliance and Enforcement Division).

- The petitioner’s motion for an extension of thirty (30) days within which to file a petition for review on certiorari is **GRANTED**, counted from the expiration of the reglementary period.

After a judicious review of the records, the Court resolves to **DENY** the instant petition and **AFFIRM** the September 13, 2013 Decision¹ and November 17, 2014 Resolution² of the Court of Appeals (CA) in CA-G.R. SP No. 104364 for failure of Care Best International, Inc. (petitioner) to show that the CA committed any reversible error in upholding the ruling of the Securities and Exchange Commission revoking its Certificate of Registration on the ground of fraud.

As correctly pointed out by the CA, incorporation is a mere grant of privilege from the State and, in order to be entitled to such privilege,³ the requirements and procedures for the grant thereof must be complied with. Under Section 14 (5) of the Corporation Code, the articles of incorporation must state the names of the incorporators and this must necessarily refer to their legal names, not fictitious names or aliases which they have no authority to use, as in this case. The fact that petitioner had for its clients various government agencies is irrelevant as all corporations must comply with the provisions of the Corporation Code.⁴

- over - two (2) pages...

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¹ Rollo, pp. 33-45. Penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Japar B. Dimaampao and Elihu A. Ybañez, concurring.

² Id. at 46-47.

³ See Section 2. Batas Pambansa Bilang 89. or the Corporation Code of the Philippines. See also *Ang*

SO ORDERED.” SERENO, C.J., on official travel. **BRION, J.**, designated acting member per S.O. No. 1947 dated March 12, 2015.

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court ^{13/17}
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Court of Appeals (x)
Manila
(CA-G.R. SP No. 104364)

The Solicitor General (x)
Makati City

Securities and Exchange Commission
SEC Bldg., EDSA
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(CED Case No. 02-2717; SEC Case
No. 09-05-83)

Public Information Office (x)
Library Services (x)
Supreme Court
(For uploading pursuant to A.M.
No. 12-7-1-SC)

Judgment Division (x)
Supreme Court

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Republic of the Philippines
COURT OF APPEALS
Manila

Fourteenth Division

CARE BEST INTERNATIONAL,
INC.,

CA-G.R. SP No. 104364

Petitioner,

-versus-

Members:

DIMAAMPAO, J. B., Chairperson,
YBAÑEZ, E. A., and
PAREDES, V. I. A., JJ.

SECURITIES AND EXCHANGE
COMMISSION AND ITS
COMPLIANCE AND
ENFORCEMENT
DEPARTMENT,

Promulgated:

Respondents.

SEP 13 2013

For C. C. 2013

X-----X

DECISION

PAREDES, J.:

THE CASE

BEFORE US is a Petition for Review under Rule 43 of the 1997 Rules of Court, as amended, assailing the Order¹ dated May 22, 2008 issued by the Securities and Exchange Commission in SEC Case No. 09-05-83, the dispositive portion reads thus:

WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. The Certificate of Registration of **CARE BEST INTERNATIONAL, INC.** is hereby **REVOKED** on the ground of fraud in the procurement thereof.

¹ Rollo, pp. 21--24a.

Let a copy of this Order be furnished the Company Registration and Monitoring Department of this Commission for its appropriate action.

SO ORDERED.

THE ANTECEDENTS

The facts are borne by the records:

Petitioner Care Best International, Inc. (*petitioner*) is a stock corporation registered with the Securities and Exchange Commission (*SEC*) on September 6, 1999, bearing SEC Registration No. A1999913047² and with an authorized capital stock of Three Million Pesos (P3,000,000.00); it is engaged in the business of rendering janitorial, messengerial, repair, maintenance, and other related services³.

The incorporators who appear⁴ in the Articles of Incorporation of the petitioner are as follows:

Name	Nationality	Residence
REYNALDO M. CUEVAS	Filipino	Blk. 3, Lot 19, Phase III Central Springville City, Camella Homes, Molino, Bacoor, Cavite
JESSICA P. EVANGELISTA	Filipino	94 Tolentino St., SFDM, Quezon City
NORA M. CUEVAS	Filipino	CitiHomes Subd., Molino, Bacoor, Cavite
ARNOLD N. BARICAWA	Filipino	Sec. 5, Block 8, Lot 3, Sunny Brook Subd., San Francisco, Gen Trias, Cavite City
RICARDO ENRIQUEZ	Filipino	5069 Malolos St., Makati City
MARIA LUZ C. SUSTIFUEDO	Filipino	7210 M. Ocampo St., Makati City

² Rollo, p. 36.

³ Rollo, p. 26

⁴ Rollo, p. 20

On June 2, 2002, Ultra Clean Service Management Corporation (*Ultra Clean*) filed a complaint⁵ before the Compliance and Enforcement Division (CED) of the SEC, docketed as CED Case No. 02-2717, seeking the revocation and/or cancellation of the Certificate of Registration of the petitioner on the ground of fraud in the procurement thereof, a violation under Section 6 (i)(1)⁶ of Presidential Decree No. 902-A⁷ (PD 902-A), as amended⁸.

Ultra Clean alleged that three (3) of petitioners' incorporators in its Articles⁹ used aliases instead of their real names; Ricardo S. Solivio made it appear he was Ricardo S. Enriquez, Arnold Naungayan made it appear he was Arnold N. Baricawa, and Jessica P. Ibita made it appear she was Jessica P. Evangelista; likewise, a complaint¹⁰ for violation of Commonwealth Act No. 142¹¹ was filed by Ultra Clean against the afore-named incorporators¹² with the Office of the City Prosecutor, Makati (OCP). (In its Resolution¹³ dated August 5, 2002, the OCP determined that: Arnold Baricawa is the registered name, from his birth certificate, of Arnold Naungayan, and recommended the dismissal of the complaint for illegal use of alias against him; recommended the filing of

⁵ Rollo, pp. 46-50.

⁶ Sec. 6 (i) (1) reads:

Sec. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:

xxx

(i) 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:

(j) Fraud in procuring its certificate of registration;

xxx

⁷ Reorganization of the Securities and Exchange Commission with Additional Powers and Placing the Said Agency Under the Administrative Supervision of the Office of the President.

⁸ Rollo, p. 28.

⁹ Rollo, pp. 37-43.

¹⁰ I.S. No. 02-B-7235-37 for: falsification, illegal use of aliases, and estafa; Rollo, pp. 46-57.

¹¹ An Act to Regulate the Use of Aliases.

Informations¹⁴ for illegal use of alias against Ibita @ Evangelista and Solivio @ Enriquez; and, recommended the dismissal of the complaint against the three respondents for falsification and estafa).

With respect to the complaint with the SEC, the CED resolved that: the mere act of allowing its incorporators/directors, specifically Solivio and Ibita, to use fictitious names, or names which are not their true names, in signing petitioner's Articles of Incorporation, a public document, is fraudulent, thereby warranting the revocation of petitioner's Certificate of Registration¹⁵; this fraudulent act left petitioner with only four (4) legally valid incorporators/directors, thereby failing to fulfill the mandatory requirement under Section 14 (6) of the Corporation Code, to wit:

Sec. 14. Contents of Article of Incorporation. -

xxx

6. The number of directors or trustees, which shall not be less than five (5) nor more than fifteen (15);

xxx

Consequently, the CED filed a petition¹⁶ before the SEC seeking the revocation of the corporate franchise or certificate of registration of petitioner on the ground of fraud in its procurement.

The SEC issued the assailed Order; hence, this Petition for review.

Meanwhile, Evelyn S. De Leon (*intervenor*), in her personal capacity (she filed the complaint for revocation before the CED in the name of Ultra Clean), filed before Us a Motion¹⁷ for leave to

¹⁴ Docketed as MeTC, Makati Criminal Cases Nos. 317397-98.

¹⁵ Rollo, p. 32.

¹⁶ Rollo, pp. 25-35.

¹⁷ Rollo pp. 233-4

intervene, attaching the Comment-Answer¹⁸ in intervention. The Motion was granted¹⁹ and she was given time within which to file her memorandum. On December 3, 2009, the intervenor submitted her amended memorandum²⁰; petitioner filed its Reply²¹ on December 23, 2009.

Petitioner's application for issuance of a temporary restraining order and/or writ of preliminary injunction was denied in Our Resolution²² dated June 04, 2010.

Upon the foregoing, petitioner attributes the following errors, viz.²³:

I.

THE SECURITIES AND EXCHANGE COMMISSION COMMITTED SERIOUS AND REVERSIBLE ERROR IN RULING THAT FRAUD ATTENDED THE PROCUREMENT OF PETITIONER CARE BEST INTERNATIONAL, INC.'S CERTIFICATE OF REGISTRATION;

II.

THE SECURITIES AND EXCHANGE COMMISSION SERIOUSLY ERRED IN FINDING THE EXISTENCE OF SUBSTANTIAL EVIDENCE OF FRAUD AND VALID GROUND THAT WARRANTED THE REVOCATION OF CBI'S CERTIFICATE OF REGISTRATION; AND

III.

THE SECURITIES AND EXCHANGE COMMISSION OVERLOOKED, IGNORED AND MISAPPREHENDED MATERIAL FACTS SHOWING THE GOOD FAITH AND HONEST INTENTION OF RICARDO E. SOLIVIO AND JESSICA P. IBITA WHEN THEY EMPLOYED OTHER NAMES IN THE ARTICLES OF INCORPORATION OF CBI AND NEGATING THE PRESENCE OF FRAUD IN ITS APPLICATION FOR REGISTRATION.

¹⁸ Rollo, pp. 235-9.

¹⁹ Rollo, p. 307.

²⁰ Rollo, pp. 318-26.

²¹ Rollo, pp. 341-55.

²² Rollo, pp. 391-2.

²³ Rollo, pp. 7-8.

THE ISSUE

In fine, the issue is whether the use of aliases of two (2) of petitioners' incorporators constitutes fraud in the procurement of petitioner's certificate of registration thereby warranting the revocation thereof.

THE COURT'S RULING***The Petition is without merit.***

The State has an interest in the names borne by individuals and entities for purposes of identification²⁴. The official name of a person is that given him in the civil register. That is his name in the eyes of the law. And, once the name of a person is officially entered in the civil register, Article 376 of the same Code seals that identity with its precise mandate: no person can change his name or surname without judicial authority²⁵.

In the case at bar, there is no showing that Ibita and Solivio were legally and judicially authorized to use aliases; as in fact, the OCP has filed criminal cases against them for illegal use of alias. The unauthorized use of aliases amounts to the use of fictitious names, and is a misrepresentation of one's identity.

As part of the requirement for petitioner's incorporation and registration with the SEC, the filing of its Articles of Incorporation is necessary. The Articles of Incorporation is the document prepared by persons establishing a corporation and filed with the SEC containing the matters required by the Code²⁶. It defines the

²⁴ *Silverio vs. Republic*, G.R. No. 174689, October 22, 2007.

²⁵ *Republic vs. Hernandez*, G.R. No. 117209, February 9, 1996.

²⁶ *Batas Pambansa Blg. 68 (1980)*

charter of the corporation and the contractual relationships between the State and the Corporation, the stockholders and the State, and between the corporation and its stockholders²⁷.

Section 14 (5) of the Corporation Code specifically provides that the articles of incorporation must state "*the names, nationalities and residences of the incorporators.*" The purpose of the requirement is to inform the public about the personal circumstances of the individuals organizing the corporation.

A misrepresentation of one's identity, with the unauthorized use of aliases, is fraud which, in its general sense, is deemed to comprise anything calculated to deceive, including acts, omissions and concealment involving a breach of legal or equitable duty, trust or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. Deceit is a species of fraud.²⁸

In this regard, We quote with approval the pertinent portion of the SEC Order stating, that:

xxx

It must not pass unstressed that the articles of incorporation is the basic corporate contract which is accorded with reverence by the law and the courts, as

²⁷ *Lanuza vs. Court of Appeals*, [G.R. No. 131394. March 28, 2005, citing *Government of the Philippines Islands vs. Manila Railroad Co.*, G.R. No. L-30646, January 30, 1929.

²⁸ See *Government of the Philippines vs. Court of Appeals*, G.R. No. 160290, March 19, 2004.

manifested by the stringent rules for its registration and the manner by which any part thereof may be amended. One such registration requirement is embodied in Section 10 of the Code, to wit:

“Sec. 10. *Number and qualifications of incorporators.* - Any number of natural persons not less than five (5) but not more than fifteen (15), all of legal age and a majority of whom are residents of the Philippines, may form a private corporation for any lawful purpose or purposes. xxx.”

The incorporators must have the capacity to enter into a valid contract, the act of forming a corporation as between the parties being contractual. Furthermore, the articles of incorporation, under Section 15 of the Code, must be acknowledged by the incorporators before a notary public. There is thereby the requirement that the incorporators must be qualified to enter into a contract. The purpose of requiring the acknowledgment is to secure the State and all concerned against the possibility of any fictitious name being subscribed to the articles and to furnish proof of the genuineness of the signatures.

Vigilance against fictitious names gains more significance if we are to consider that incorporators, who, as in this case, usually act as the first set of directors/trustees, may be subject to personal liabilities, pursuant to Section 31 of the Code.

By using different names, Solito (*sic*) and Ibita effectively rendered difficult, if not impossible, for the Commission to detect or determine whether Ricardo S. Enriquez and Jessica P. Evangelista complied with the requirements of Section 10 as afore-quoted. Simply put, the Commission would have been on the look-out for Ricardo S. Enriquez and Jessica P. Evangelista and not for Ricardo Solivio and Jessica Ibita. Above all, their act(s) tended to confuse and defeat whatever claims the other corporate stockholders, including the general public, may have against them.

Viewed against the foregoing considerations, Solito (*sic*) and Ibita's admission that they used names other than their registered names in respondent's articles of incorporation is, to our belief, more than enough evidence to grant the instant petition, especially since they did not even bother to explain why they committed such act. The

Commission, as a self-respecting tribunal or body, deserve better than the self-serving assertion of Solito (*sic*) and Ibita that their intention was "not to defraud the public or evade personal accountabilities and liabilities but for reasons known only to them."²⁹ (Underlining ours).

The assailed Order aptly opined that fraud was committed by Ibita and Solivio who, as incorporators/directors of the corporation using unauthorized aliases, evaded whatever personal liability directors/trustees may incur under Section 31 of the Corporation Code; and, made it extremely difficult for the SEC to determine if there was compliance with the requirement on the number and qualification of incorporators in Section 10 of the Corporation Code, that:

Any number of natural persons not less than five (5) but not more than fifteen (15), all of legal age and a majority of whom are residents of the Philippines, may form a private corporation for any lawful purpose or purposes. Each of the incorporators of a stock corporation must own or be a subscriber to at least one (1) share of the capital stock of the corporation.

Since name provides identification, the persons identified as Jessica Evangelista and Ricardo Enriquez in the Articles of Incorporation are, in the eyes of the law, fictitious and non-existent; hence, the use of an unauthorized alias by Ibita and Solivio inevitably resulted in the Article of Incorporation being a falsified document considering that: (a) they cannot be viewed as having validly and legally comported themselves as incorporators in the formation of the corporation; as fictitious and legally non-existent individuals, they cannot be said to own or hold a share in the capital stock of the corporation; therefore, the corporation violated the requirement on the number of incorporators and their

²⁹ Rollos 23.4

qualifications in Section 10 of the Corporation Code; (b) the Articles of Incorporation is required to be notarized³⁰; as a notarized document, the Articles of Incorporation is executed to lend truth to the statements contained therein and to the authenticity of the signatures³¹; since the contents of the Articles of Incorporation contain untruthful statements, and the signatures of Ibita and Solivio, signing as Evangelista and Enriquez, respectively, are counterfeit, the authenticity of the Articles of Incorporation came under a cloud of doubt.

Petitioner maintains that there was no malice, bad faith or intent to defraud when Ibita and Solivio signed petitioner's Articles of Incorporation using their aliases. The argument deserves scant consideration.

The unauthorized use of an alias is punished with imprisonment of from one year to five years and a fine of P5,000.00 to P10,000.00 under RA 6085³²; the offense is punished by a special law, hence, proof of malice or deliberate intent is not necessary, as the offense is *mala prohibita*³³. The principle applies with equal force in these administrative proceedings where the quantum of proof required is "substantial evidence" or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion³⁴.

³⁰ See Section 15, Corporation Code.

³¹ *Delfin vs. Billones*, G.R. No. 146550, March 17, 2006.

³² RA 6085 amended Commonwealth Act No. 142; approved on August 4, 1962. See Sec. 5, RA 6085.

³³ See *In re: Petition for the dismissal from service and/or disbarment of Judge Baltazar R. Dizon, RTC of Pasay City, Branch 113, Hon. Alexander A. Padilla, Commissioner of Customs*, A.M. No. 3086, May 3, 1989.

³⁴ See *Compton vs. Office of the Ombudsman*, G.D. No. 114692, January 19, 2000.

Moreover, Section 6 (i)(1) of PD 902-A, authorizes the SEC to suspend or revoke the franchise or certificate of registration of corporations, partnerships or associations on the ground, among others, of fraud in procuring its certificate of registration.

Fraud can be classified as either *actual* or *constructive*. *Actual* or *positive fraud* proceeds from an intentional deception practiced by means of the misrepresentation or concealment of a material fact. *Constructive fraud* is construed as a fraud because of its detrimental effect upon public interests and public or private confidence, even though the act is not done with an actual design to commit positive fraud or injury upon other persons³⁵. Since Section 6(i)(1) of PD 902-A simply speaks of fraud without limiting its use of the term, then the section must include not only actual fraud, but constructive fraud as well. Since the provision is not concerned with a crime or a felony, criminal intent or intent to deceive is not essential. Consequently, even assuming that incorporators Ibita and Solivio were in good faith does not detract from the undisputed commission of the falsity when they used fictitious names in petitioner's Articles of Incorporation.

Incorporation is a grant of privilege from the state, and the state is entitled to preserve the value of that privilege. Thus, in order to enjoy such privilege, the requirements and procedures for the grant thereof must be strictly complied with. To this end, the state prescribes and gives notice, through statutes and regulations, of the necessary requirements and procedures for the grant of the privilege. In this jurisdiction, the Corporation Code prescribes the

³⁵ See *Cal, Jr. vs. Zosa*, G.R. No. 152518, July 31, 2006, citing *Heirs of Roxas v. Court of Appeals*, G.R. No. 118436, March 21, 1997.

requirements for the grant of a corporate franchise, and the certificate of registration may be acquired only if the conditions required by the statutes are complied with; therefore, any material statement in the Articles of Incorporation which is a falsehood may be considered as fraudulent, regardless of the intent of the incorporators.

Lastly, public interest will be well served by the revocation of petitioner's certificate of registration considering that not only was fraud and deceit perpetrated upon the SEC through the false statements in petitioner's Articles of Incorporation, but also taking into account the fact that petitioner's incorporation fell short of the mandatory requirement of the Code with respect to the number and qualifications of incorporators.

WHEREFORE, premises considered, the Petition is **DENIED**. The Order dated May 22, 2008, of the Securities and Exchange Commission in SEC Case No. 09-05-83, is **AFFIRMED**.

SO ORDERED.

ORIGINAL SIGNED
VICTORIA ISABEL A. PAREDES
Associate Justice

WE CONCUR:

ORIGINAL SIGNED
JAPAR B. DIMAAMPAO
Associate Justice

ORIGINAL SIGNED
ELIHU A. YBAÑEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ORIGINAL SIGNED
JAPAR B. DIMAAMPAO
Associate Justice
Chairperson, Fourteenth Division