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WHEREFORE, the instant petition is **GRANTED**. The assailed Decision and Resolution, of the Court of Appeals dated April 8, 2013 and January 6, 2014, respectively, in CA-G.R. SP No. 126253, are **REVERSED** and **SET ASIDE**. The H.D. Lee Company, Inc.'s application for the registration of the mark "*LEE & OGIVE CURVE DESIGN*" is **DENIED**.

SO ORDERED.

Velasco, Jr. (Chairperson), *Bersamin, Jardeleza,* and *Tijam, JJ.,* concur.

THIRD DIVISION

[G.R. No. 211108. June 7, 2017]

ALEJANDRO D.C. ROQUE, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATION CODE; SECTION 74 ON THE LIABILITY FOR DAMAGES OF ANY OFFICER OR AGENT OF THE CORPORATION FOR REFUSING TO ALLOW ANY MEMBER OF THE CORPORATION TO EXAMINE AND COPY EXCERPTS FROM ITS RECORDS OR MINUTES; REQUISITES FOR VIOLATION THEREOF.— Section 74 of the Corporation Code provides for the liability for damages of any officer or agent of the corporation for refusing to allow any director, trustee, stockholder or member of the corporation to examine and copy excerpts from its records or minutes. Section 144 of the same Code further provides for other applicable penalties in case of violation of any provision of the Corporation Code. Hence, to prove any violation under the aforementioned provisions, it is

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necessary that: (1) a director, trustee, stockholder or member has made a prior demand in writing for a copy of excerpts from the corporations records or minutes; (2) any officer or agent of the concerned corporation shall refuse to allow the said director, trustee, stockholder or member of the corporation to examine and copy said excerpts; (3) if such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal; and (4) where the officer or agent of the corporation sets up the defense that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand, the contrary must be shown or proved.

2. ID.; CORPORATION LAW; THE REVOCATION OF A CORPORATION'S REGISTRATION DOES NOT AUTOMATICALLY STRIP OFF A MEMBER OF HIS RIGHT TO EXAMINE THE RECORDS.— [T]he revocation of a corporation's Certificate of Registration does not automatically warrant the extinction of the corporation itself such that its rights and liabilities are likewise altogether extinguished. In the case of *Clemente v. Court of Appeals*, the Court explained that the termination of the life of a juridical entity does not, by itself, cause the extinction or diminution of the rights and liabilities of such entity nor those of its owners and creditors. Thus, the revocation of BMTODA's registration does not automatically strip off Ongjoco of his right to examine pertinent documents and records relating to such association.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

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D E C I S I O N

TIJAM, *J.*:

Before Us is a Petition for Review on Certiorari under Rule 45 filed by petitioner Alejandro Roque (Roque).

Roque assails the Decision[1] dated August 31, 2012 and the Resolution[2] dated January 22, 2014 of the Court of Appeals[3] (CA), which set aside and annulled the Order[4] dated November 12, 2008 of the Regional Trial Court (RTC),[5] Third Judicial Region, Branch 11, Malolos City, Bulacan in Criminal Case No. 1011-M- 2005. Said Order granted the motion for leave of court to file demurrer to evidence filed by Rosalyn Singson (Singson), herein petitioner's co-accused.

On November 17, 1993, Barangay Mulawin Tricycle Operators and Drivers Association, Inc. (BMTODA) became a corporation duly registered with the Securities and Exchange Commission (SEC).

Sometime in August 2003, Oscar Ongjoco (Ongjoco), a member of BMTODA, learned that BMTODA's funds were missing. In a letter, Ongjoco requested copies of the Association's documents pursuant to his right to examine records under Section 74 of the Corporation Code of the Philippines (Corporation Code). However, Singson, the Secretary of BMTODA, denied his request.

Ongjoco also learned that the incumbent officers were holding office for three years already, in violation of the one-year period

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[1] *Rollo* at pp. 34-46.

[2] *Id*. at 48-49.

[3] Penned by Associate Justice Rodil V. Zalameda and concurred in by Presiding Justice Andres B. Reyes, Jr. and Associate Justice Ramon M. Bato, Jr.

[4] *Rollo*, pp. 65-66.

[5] Promulgated by Judge Basilio R. Gabo, Jr.

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provided for in BMTODA's by-laws. He then requested from Roque, the President of BMTODA, a copy of the list of its members with the corresponding franchise numbers of their respective tricycle fees and the franchise fees paid by each member, but Roque denied Ongjoco's request.

Ongjoco filed an Affidavit-Complaint against Roque and Singson for violation of Section 74 in relation to Section 144 of the Corporation Code because of their refusal to furnish him copies of records pertaining to BMTODA.

The Office of the City Prosecutor of San Jose Del Monte, Bulacan found probable cause to indict Roque and Singson. Hence, an Information was filed against them, which reads:

> That sometime in December 2004, in San Jose Del Monte City, [P]rovince of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, Alejandro D.C. Roque and Rosalyn G. Singson, being the President and Secretary, respectively, of Barangay Mulawin Tricycle Operators and Drivers Association, Inc. (BMTODA), conspiring, confederating, and mutually helping each other, did then and there willfully, unlawfully, and feloniously fail and neglect to keep in their official record of all business transactions, minutes of all meetings or stockholders or members, or of the board of directors or trustees and refused to allow stockholders, members, directors or trustees to examine and copy excerpt from the records or minutes of the association after demand in writing.[6]

After the prosecution rested its case, Roque and Singson filed a Motion for Leave of Court to File Demurrer to Evidence with Motion to Dismiss by way of Demurrer to Evidence. The prosecution failed to file any comment thereon.

In an Order[7] dated November 12, 2008, the RTC granted the motion and gave due course to Roque and Singson's demurrer to evidence. The RTC ruled that said association failed to prove its existence as a corporation. Hence, a violation under the Corporation Code cannot be made applicable against its officers. The *fallo* thereof reads:

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[6] CA Decision, *Rollo*, p. 37.

[7] *Id*. at 65-66.

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Accordingly, this demurrer is GIVEN DUE COURSE and the instant case is hereby DISMISSED.

SO ORDERED.[8]

On appeal, the CA reversed and set aside the Order dated November 12, 2008 of the RTC. The CA ruled that BMTODA is a duly registered corporation. The CA stated that a Petition to Lift Order of Revocation and the SEC Order Lifting the Revocation were presented in evidence; and that logic dictates that such documentary evidence presupposes a duly registered and existing entity. The dispositive portion thereof reads:

WHEREFORE, premises considered, the instant Petition for Certiorari is hereby GRANTED. Accordingly, the court a quo's Order dated 12 November 2008 is hereby ANNULLED and SET ASIDE.

This case is hereby remanded to the court a quo for the presentation of defense evidence.

SO ORDERED.[9]

Hence, Roque, thru his counsel, filed the present Petition.

Petitioner contends that there is want of evidence to prove that BMTODA is a corporation duly established and organized under the Corporation Code; thus, he cannot be prosecuted under the penal provisions of the said code.

The appeal lacks merit.

Section 74[10] of the Corporation Code provides for the liability for damages of any officer or agent of the corporation for refusing

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[8] *Id*. at 66.

[9] *Id*. at 45-46.

[10] Section 74. **Books to be kept; stock transfer agent.—**

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Any officer or agent of the corporation who shall refuse to allow any director, trustee, stockholder or member of the corporation to examine and copy excerpts from its records or minutes, in accordance with the provisions of this Code, shall be liable to such director, trustee, stockholder or member for damages and in addition, shall be guilty of an offense which shall be punishable under Section 144 of this Code: *Provided*, That if such refusal

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to allow any director, trustee, stockholder or member of the corporation to examine and copy excerpts from its records or minutes. Section 144 of the same Code further provides for other applicable penalties in case of violation of any provision of the Corporation Code.

Hence, to prove any violation under the aforementioned provisions, it is necessary that: (1) a director, trustee, stockholder or member has made a prior demand in writing for a copy of excerpts from the corporations records or minutes; (2) any officer or agent of the concerned corporation shall refuse to allow the said director, trustee, stockholder or member of the corporation to examine and copy said excerpts; (3) if such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal; and (4) where the officer or agent of the corporation sets up the defense that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand, the contrary must be shown or proved.[11]

Clearly, Ongjoco, as a member of BMTODA, had a right to examine documents and records pertaining to said association. To recall, Ongjoco made a prior demand in writing for copy of

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is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal: and *Provided, further*, That it shall be a defense to any action under this section that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand.

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[11] *Flordeliza v. Ang,* G.R. No. 178511, December 4, 2008.

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pertinent records of BMTODA from Roque and Singson. Ongjoco sent his letters dated December 13, 2003[12] and August 29, 2004[13] to Roque and Singson, respectively. However, both of them refused to furnish Ongjoco copies of such pertinent records.

Roque argues that when the letters were received by him and Singson, BMTODA's registration was already revoked. Hence, BMTODA ceased to exist as a corporation.

We are not persuaded.

While it appears that the registration of BMTODA as a corporation with the SEC was revoked on September 30, 2003, the letter-request of Ongjoco to Singson, which was dated while BMTODA's registration was revoked, was actually received by Singson *after* the revocation was lifted. In a Letter dated October 11, 2004, the General Counsel of the SEC made it clear that the SEC lifted the revocation of BMTODA's registration on August 30, 2004. As the CA correctly observed, the letter-request was received by Singson on September 23, 2004 when BMTODA had regained its active status.[14]

In any case, the revocation of a corporation's Certificate of Registration does not automatically warrant the extinction of the corporation itself such that its rights and liabilities are likewise altogether extinguished. In the case of *Clemente v. Court of Appeals,*[15] the Court explained that the termination of the life of a juridical entity does not, by itself, cause the extinction or diminution of the rights and liabilities of such entity nor those of its owners and creditors.

Thus, the revocation of BMTODA's registration does not automatically strip off Ongjoco of his right to examine pertinent documents and records relating to such association.

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[12] *Rollo*, p. 93.

[13] *Id*. at 94.

[14] CA Decision, *rollo*, *id*. at 43.

[15] G.R. No. 82407, March 27, 1995.

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Also, since Roque admitted the revocation of BMTODA's registration,[16] he cannot come forward and disclaim BMTODA's registration with the SEC as a corporation. It is logical to presume that a registration precedes the revocation thereof; as any registration cannot be revoked without its valid existence.

Moreover, Roque also tries to exculpate himself from liability by claiming Singson's denial of the request of Ongjoco as Singson's personal act.

We do not agree.

A reading of this present Petition reveals that Roque admitted[17] his denial of Ongjoco's request, *i.e.*, to furnish him a copy of BMTODA's list of its members with the corresponding franchise body numbers of their respective tricycles and franchise fees paid by each member. Also, what was requested from Singson pertains to an entirely different document. Thus, Singson's denial is immaterial, and does not detract from Roque's denial of Ongjoco's request to access the above-mentioned document. For his individual and separate act, Roque should be held accountable. Hence, Roque's denial is unquestionably considered as a violation under the Corporation Code.

WHEREFORE, the instant petition is **DENIED**. The Decision dated August 31, 2012 and Resolution dated January 22, 2014 of the Court of Appeals are **AFFIRMED *in toto***.

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin, Reyes, and *Caguioa,*[*] *JJ.*, concur.

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[16] *Rollo*, pp. 22-23.

[17] *Id*. at 13.

[*] Designated as additional member as per Raffle dated February 27, 2017.