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SECOND DIVISION

[G.R. No. 239010; July 6, 2022]

SECURITIES AND EXCHANGE COMMISSION, *Petitioner*, *v.* **AZ 17/31 REALTY, INC.,** *Respondent*.

[G.R. No. 240888; July 6, 2022]

AZUCENA LOCSIN-GARCIA, *Petitioner*, *v.* **AZ 17/31 REALTY, INC.,** *Respondent*.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

In their separate Petitions for Review on *certiorari*, Azucena Locsin-Garcia (*Locsin-Garcia*) and the Securities and Exchange Commission (*SEC*) assail the following dispositions of the Court of Appeals in CA-G.R. SP No. 152300, entitled *AZ 17/31 Realty, Inc. v. Azucena Locsin-Garcia*:

1. **Decision**[1] dated April 24, 2018, declaring that the inclusion of the name of Pacita Javier (*Pacita*) as incorporator of AZ 17/31 Realty, Inc. albeit she was already deceased, did not amount to fraud insofar as the procurement of the company's certificate of registration was concerned; and

2. **Resolution**[2] dated July 16, 2018, denying reconsideration.

Antecedents

AZ 17/31 Realty, Inc., a close corporation, was incorporated[3] on April 23, 2008 with the primary purpose:

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[1] Penned by Associate Justice Stephen C. Cruz, concurred in by Associate Justices Rosmari D. Carandang (Retired Member of this Court) and Nina G. Antonio-Valenzuela; G.R. No. 239010, Vol. I, *rollo*, pp. 36–45.

[2] G.R. No. 240888, Vol. I, pp. 32–34.

[3] Certificate of Incorporation, G.R. No. 239010, id. at 207.

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[T]o 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.[4]

The names of its incorporators[5] and their respective subscriptions are indicated below:

Name	Nationality	Residence	No. of Shares Subscribed	Amount Subscribed	Amount Paid	
Antonio de Zuzuarregui, Jr.	Filipino	10 Missouri St., San Juan City	18,682	Php18,682,000 .00	Php18,682,000 .00	PROPERTY
Enrique de Zuzuarregui	Filipino	319 Greenhaven Park Homes, Quezon City	1,437	Php1,437,000 .00	Php1,437,000 .00	
Pacita Javier	**Filipino**	**1 Purdue St., San Juan City**	**1,437**	**Php1,437,000 .00**	**Php1,437,000 .00**	
Antonette S. Rosca	Filipino	10 Missouri St., San Juan City	100	Php100,000 .00	Php25,000 .00	CASH
Anthony de Zuzuarregui	Filipino	10 Missouri St., San Juan City	144	Php144,000 .00	Php36,000 .00	
Antoinette de Zuzuarregui	Filipino	1 Purdue St., San Juan City	100	Php100,000 .00	Php25,000 .00	
Maria Edna de Zuzuarregui	Filipino	1 Purdue St., San Juan City	100	Php100,000 .00	Php25,000 .00	

These incorporators comprised the company's first Board of Directors.[6]

Enrique de Zuzuarregui (Enrique) and Antonio de Zuzuarregui, Jr. (Antonio, Jr.) are the children of Pacita. Meanwhile, Antonette

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4 Id. at 209.

5 Id. at 210–212.

6 SIXTH: That the number of directors of said corporation shall be SEVEN (7) and that the names, nationalities[,] and residences of the first directors who are to serve until their successors are elected and qualified as provided by the by laws are as follows: (incorporators), G.R. No. 239010, Vol. I, id. at 211.

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S. Rosca is the common-law wife of Antonio, Jr. Anthony, Pilartoni, Maria Edna, and Antoinette are Antonio, Jr.'s children.[7]

As of 2016, the following are the shareholders and officers of AZ 17/31 Realty, Inc.:[8]

Name	Officer
Anthony de Zuzuarregui	President
Antonette S. Rosca	Director
Pilartoni de Zuzuarregui	CFO
Maria Edna de Zuzuarregui	Director
Antoinette de Zuzuarregui	Director
Enrique de Zuzuarregui	Director

By Letter[9] dated January 9, 2016 addressed to the Compliance and Enforcement Department (*CED*) of the SEC, Locsin-Garcia sought to revoke the incorporation and registration of AZ 17/31 Realty, Inc. on ground of fraud committed in procuring its certificate of registration. She essentially alleged that one of the incorporators, Pacita, had long been dead at the time of its incorporation.[10]

In the Articles of Incorporation (*AOI*) of AZ 17/31 Realty, Inc., Pacita signed as incorporator with her Tax Identification Number[11] as proof of identity when in truth and in fact, she has been already six-feet below the ground since August 17, 2004, or three and a half (3 ½) years from date of incorporation on April 23, 2008.

Per verification with the National Statistics Office (*NSO*), the CED found that Pacita died due to cardiopulmonary arrest on

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7 G.R. 240888, Vol. I, *rollo*, p. 7.

8 G.R. No. 239010, Vol. I, *rollo*, pp. 82-83.

9 G.R. No. 240888, Vol. I, *rollo*, p. 37.

10 G.R. No. 239010, Vol. I, *rollo*, p. 71.

11 142-049-176.

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August 17, 2004, at the age of ninety (90). As reflected in the death certificate, the informant was Enrique.[12]

In its Answer and Supplemental Answer,[13] AZ 17/31 Realty, Inc. prayed for the outright dismissal of the complaint on two (2) grounds: failure to attach a certificate of non-forum shopping and lack of cause of action. On the second ground, the company asserted that Locsin-Garcia was not a real party in interest for lack of material interest in the matter that would be affected by the revocation of its certificate of registration.[14]

On the merits, AZ 17/31 Realty, Inc. riposted there was no fraud in procuring its certificate of registration since the signature of deceased Pacita was a mere surplusage not required to meet the minimum requirement of five incorporators. It was fully compliant with the SEC's reportorial requirements, regularly paid its taxes and other government dues, and had greatly contributed to the country's economy.

Order of the SEC-Company Registration and Monitoring Department (*SEC-CRMD*)

By Order[15] dated May 30, 2016, the SEC-CRMD revoked the certificate of registration of AZ 17/31 Realty, Inc.[16] It ruled that although the complaint of Locsin-Garcia should have been outrightly dismissed for failure to attach a certificate of non-forum shopping, the interest of the investing public demanded the liberal application of the rules if only to uphold the investors' right against corporations fraudulently incorporated like AZ 17/31 Realty, Inc. At any rate, the SEC was empowered to *motu proprio*,

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[12] G.R. No. 239010, Vol. I, *rollo*, p. 71.

[13] Id. at 72–73.

[14] G.R. No. 240888, Vol. I, *rollo*, p. 79.

[15] G.R. No. 239010, Vol. I, *rollo*, pp. 71–77.

[16] WHEREFORE, premises considered, the Certificate of Registration of AZ 17/31, Inc. registered on 23 April 2008, under SEC Registration No. CS200805443 is hereby REVOKED.
x x x
SO ORDERED, id. at 76.

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after due notice and hearing, suspend or revoke certificates of registration of corporations.

On the merits, it held that Pacita could not have been an incorporator of AZ 17/31 Realty, Inc. as she already died on August 17, 2004. Pacita's death also extinguished her capacity to enter into contractual relations. By misrepresenting that Pacita still had the legal capacity to become an incorporator, AZ 17/31 Realty, Inc. effectively deceived not only the investing public but also the SEC into approving its AOI. The corporation could not feign ignorance of Pacita's death since it was Enrique – an incorporator himself and Pacita's son, who was the informant of Pacita's death per the latter's death certificate. Had the Commission been aware of the fraud and deception, it would not have approved AZ 17/31 Realty, Inc.'s AOI.

Compliance with the reportorial requirements and payment of taxes and other government dues did not cure AZ 17/31 Realty, Inc.'s fraudulent and deceptive incorporation.

Proceedings before the SEC-*En Banc* (*SEC-EB*)

On appeal,[17] AZ 17/31 Realty, Inc. faulted the SEC-CRMD for ordering the revocation of its registration. Antonio, Jr., the author of the alleged fraud and AZ 17/31 Realty, Inc.'s majority shareholder,[18] already died. The death of the brain child of this misrepresentation also extinguished his criminal liability arising therefrom. So must the company's administrative liability, if any, be extinguished.

At any rate, Pacita was Antonio, Jr.'s beloved mother and her inclusion in the roster of incorporators was intended not for the purpose of complying with the required minimum number of incorporators but to perpetuate the memory of his beloved mother. Even if Pacita's inclusion as an incorporator is nullified, the remaining incorporators could still comply with the Corporation Code.

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[17] Id. at 78–95.

[18] 86%; G.R. No. 239010, Vol. I, id. at 82.

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The other incorporators who were only nominal shareholders **admitted** the improper inclusion of Pacita's name but nonetheless argued that they could not have outvoted or overturned the will of their father Antonio, Jr. According to them, they were unwilling participants to the misrepresentation. The living shareholders not privies to the alleged fraud, therefore, should not be made to suffer the consequences of Antonio, Jr.'s poor judgment.

There was, nonetheless, no intent to cause prejudice to anyone. In fact, incorporators only serve as such for purposes of registration. It is not even a continuing requirement that the incorporators be living or continue to hold shares for a corporation to continue existing as such.

Even assuming there was a defect in the incorporation, revocation was too harsh a penalty for those unwilling participants to the misrepresentation. The present directors and officers manifested their willingness to pay a fine or penalty as may be determined by the Commission, in lieu of revocation.

It reiterated the argument that the revocation of its registration would translate to loss of earnings for the local government unit. The revocation, too, will adversely affect not only its employees but also its clients[19] and their respective employees. It added that the CED, and not the CRMD, was the competent department to determine the existence of fraud.

Decision of the Securities and Exchange Commission-*En Banc* (*SEC En Banc*)

By Decision[20] dated August 10, 2017, the SEC-*En Banc* affirmed. It upheld the jurisdiction of SEC-CRMD over the case pursuant to SEC Regulation No. 359[21] authorizing SEC-CRMD to revoke certificates of incorporation of corporations and partnerships. Further, it upheld the liberal application of the rules to address Locsin-Garcia's failure to attach a certificate of non-forum shopping due to the overriding interest of the investing

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[19] McDonald's, Shell, and Ever Gotesco, id. at 84.

[20] Id. at 99–106.

[21] Dated August 12, 2010.

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public. In revocation of registration cases, there is no real party in interest to speak of since the Commission simply discharges its regulatory powers.

It agreed with the SEC-CRMD that the deceased Pacita had no legal capacity to enter into contractual relations. The other incorporators could not feign ignorance of the fraud and misrepresentation since the incorporators themselves[22] were the decedent's grandchildren.

Proceedings before the Court of Appeals

Undaunted, AZ 17/31 Realty, Inc.[23] elevated the case to the Court of Appeals *via* Rule 43 of the Rules of Court. It asked for the issuance of a temporary restraining order or writ of preliminary injunction against the implementation of the decision of the SEC-*En Banc*. It essentially reiterated its arguments before the SEC-*En Banc*, albeit it added that had the SEC been more circumspect, it would have found that Locsin-Garcia was a convicted felon for falsification of public document.[24] She had been in a feud with the Zuzuarregui family for almost 30 years already in view of her fake and overlapping title. In its Decision[25] dated October 31, 2012, the appellate court affirmed the trial court's order to deny her complaint for annulment and declaration of nullity of title. At any rate, AZ 17/31 Realty, Inc. initiated against her a case for quieting of title pending before the Regional Trial Court (*RTC*) Branch 104, Quezon City.[26]

On September 14, 2017, the appellate court issued a temporary restraining order,[27] enjoining the SEC from implementing its

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[22] Enrique de Zuzuarregui, Antonette S. Rosca, Anthony de Zuzuarregui, Antonette de Zuzuarregui, Pilartoni de Zuzuarregui, and Maria Edna de Zuzuarregui, G.R. No. 240888, Vol. I, p. 72.

[23] G.R. No. 239010, Vol. I, *rollo*, pp. 107-141.

[24] CA – G.R. CR No. 18630 dated October 27, 1998.

[25] CA – G.R. CV No. 96814, Penned by Justice Fernanda Lampas-Peralta, concurred in by Associate Justices Francisco P. Acosta and Rodil V. Zalameda.

[26] Civil Case No. R-QZN-13-03841-CV.

[27] For 60 days.

Decision[28] dated August 10, 2017. Then, on November 10, 2017, the Court of Appeals issued a corresponding writ of preliminary injunction.[29]

Ruling of the Court of Appeals

By Decision[30] dated April 24, 2018, the Court of Appeals reversed and lifted the order of revocation.[31] It sustained the argument of AZ 17/31 Realty, Inc. against the finding of fraud in the inclusion of deceased Pacita's name as one of the incorporators of the company.

Locsin-Garcia moved for reconsideration but the same got denied by Resolution dated July 16, 2018.[32]

The Present Petitions

Locsin-Garcia and the SEC now seek affirmative relief through their respective petitions for review on *certiorari*.

In G.R. No. 239010,[33] the SEC, through the Office of the Solicitor General (*OSG*), prays that the decision of the SEC-*En Banc* be reinstated and affirmed *in toto*. It faults the Court of Appeals in holding that the act of forging a person's signature was not fraud. On this score, the Court of Appeals could not have correctly relied on the provisions of Republic Act (*RA*) No. 5050, which had already been repealed by Presidential Decree

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[28] G.R. No. 239010, Vol. I, *rollo*, p. 16.

[29] Id. at 16–17.

[30] Id. at 36–45.

[31] WHEREFORE, in view of the foregoing premises, the instant petition is hereby GRANTED. The Decision dated August 10, 2017 of the Securities and Exchange Commission-*En Banc*, in SEC-*En Banc* Case No. 07-16-408, is REVERSED and SET ASIDE and a new one entered granting petitioner's Memorandum of Appeal and dismissing respondent's letter complaint for lack of merit.

The Writ of Preliminary Injunction issued in the instant case is hereby made PERMANENT.

[32] G.R. No. 240888, Vol. I, *rollo*, pp. 32–34.

[33] G.R. No. 239010, Vol. I, *rollo*, pp. 10–34.

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(*PD*) No. 902-A,[34] the Investment Houses Law,[35] the Corporation Code,[36] the Financing Company Act of 1998,[37] and the Securities Regulation Code.[38]

The SEC argues that the falsification and misrepresentation of material facts in the AOI, such as the name of an incorporator, amount to fraud under PD 902-A. Under SEC Regulation No. 359, too, there is fraud when one of the incorporators was already dead at the time of incorporation and if any of the incorporators submitted spurious or falsified documents to prove compliance with the requirements of registration. The following were indicative of AZ 17/31 Realty, Inc.'s fraud in obtaining its certificate of registration:

1) Falsification of Pacita's signature in the AOI;
2) Submission of the notarized falsified AOI and By Laws; and
3) Misrepresentation of Pacita's death and legal capacity to enter into business and contractual relations.

In its Comment[39] dated December 17, 2018, AZ 17/31 Realty, Inc. defends the appellate court's dispositions. It ascribes grave abuse of discretion on the SEC for "hastily" imposing the supreme penalty of revocation for the superfluous inclusion of Pacita's name in the AOI.

AZ 17/31 Realty, Inc., brings to fore *Roy III v. Herbosa*,[40] where the Supreme Court allegedly upheld the validity of Memorandum Circular No. 8 issued by the SEC giving all non-compliant corporations in nationalized and partly nationalized industries,

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[34] 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, Presidential Decree No. 902-A, March 11, 1976.

[35] Governing the Establishment, Operation and Regulation of Investment Houses, Presidential Decree No. 129, February 15, 1973.

[36] Corporation Code of the Philippines, Batas Pambansa Blg. 68, May 1, 1980.

[37] Financing Company Act of 1998, Republic Act No. 8556, February 26, 1998.

[38] The Securities Regulation Code, Republic Act No. 8799, July 19, 2000.

[39] G.R. No. 239010, Vol. I, *rollo*, pp. 174–203.

[40] 800 Phil. 459, 497 (2016).

one year to comply with the constitutional or statutory ownership requirement. But here, the SEC injudiciously meted the ultimate penalty of revocation of its certificate of registration due merely to its superfluous inclusion of Pacita's name in its AOI. Instead of revocation, the SEC could have given it the opportunity to amend its AOI to remove Pacita's name.

Whether the inclusion of Pacita's name in the AOI constituted falsification is not for the SEC, but for the courts, to determine. In any event, the fact that Pacita's monetary contribution was not necessary to meet the required minimum paid-up capital of the company (as Antonio, Jr.'s contribution alone already accounted for ₱18,682,000.00 – way above the 25% minimum paid-in capital) should be factored in the final determination of the presence or absence of fraud.

In G.R. No. 240888,[41] Locsin-Garcia prays anew for the revocation of AZ 17/31 Realty, Inc.'s AOI. She reiterates the arguments in her petition for revocation. She points out that AZ 17/31 Realty, Inc. made it appear that Pacita was still very much alive, was able to sign the AOI, act as initial director and even attested under oath that Anthony was elected treasurer when in truth and in fact, she was already dead three and a half (3 ½) years prior to its incorporation.

The fact that the law merely requires five incorporators does not alter the fact of falsification. For the AOI is not just an ordinary contract as it binds not only the corporation to its stockholders but also the corporation to the State. Compliance with the SEC reportorial requirements and payment of taxes, too, are not grounds for exculpation from the fraud already committed.

In its Comment,[42] AZ 17/31 Realty, Inc. counters that Locsin-Garcia's letter-complaint should have been dismissed outright, intended as it was to harass the corporation and its current stockholders, and extort money from them.

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[41] G.R. No. 240888, Vol. I, *rollo*, pp. 3–17.

[42] G.R. No. 240888, Vol. II, *rollo*, pp. 452–486.

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Locsin-Garcia only seeks the revocation of its registration so she can have leverage against the company in the quieting of title case[43] it filed against her. Locsin-Garcia had been embroiled in several legal battles with the Zuzuarregui family for two decades already, and this suit is a harassment suit. It all started when Locsin-Garcia took advantage of the fire that gutted the Registry of Deeds in Quezon City in 1988 to transfer a portion of land owned by Antonio, Jr., Enrique, and Pacita, which portion was later on legally transferred to AZ 17/31 Realty, Inc. Using a fake title in 1992, Locsin-Garcia filed Civil Case No. Q-92-12978 for annulment and/or declaration of nullity of title over the land owned by the Zuzuarreguis. The trial and appellate courts uniformly held that Locsin-Garcia obtained an illegal, fake, and spurious title over the parcel of land.

As a result of the falsification she committed, she was charged with three (3) counts of falsification,[44] got convicted by the trial court, and was affirmed by the appellate court. The verdict of conviction lapsed into finality on April 8, 1999. No fraud, actual, or constructive, could be ascribed to AZ 17/31 Realty, Inc. much less, on its stockholders, in the procurement of its certificate of registration.

Even without Pacita's name, the minimum number of incorporators would have been met. By the same token, the inclusion of Pacita's name in the attestation pertaining to Anthony's election as treasurer was immaterial to the approval of its certificate of registration.

Pacita's contribution, too, was not necessary to meet the required minimum paid-in capital as Antonio, Jr.'s contribution alone already accounted for ₱18,682,000.00 – way above the 25% minimum paid-in capital.

In practice, the SEC granted incorporation so long as the required minimum number of individual incorporators had been met. In the SEC Opinion dated May 23, 1967, the SEC declared that both domestic and foreign corporations, if allowed by their charters,

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[43] R-QZN-13-03841-CV.

[44] Criminal Case Nos. Q-94-53589-91, G.R. No. 240888, Vol. II, p. 465.

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may be initial subscribers to the capital stock of a corporation, but their subscription will not be considered in the computation of the 25% requirement for incorporation. The inclusion of a corporation as an incorporator, therefore, is no different from the inclusion of a deceased person in the sense that **both have no capacity under the law**.

Granting it committed a mistake in the AOI, it prays anew that any of the lesser penalties of suspension and/or fine be imposed in lieu of revocation.

Threshold Issues

1. Can a quasi-judicial body like the SEC file a petition for review defending its dispositions against an appellate body which ruled against it?

2. Which department of the SEC has jurisdiction over a complaint for revocation of certificate of registration?

3. Is the inclusion of a dead person as an incorporator considered fraud in procuring a certificate of registration?

Ruling

G.R. No. 239010

The petition of SEC must be expunged for lack of capacity to sue.

Preliminarily, the Court notes that SEC seeks to reinstate its *En Banc* Decision dated August 10, 2017, revoking AZ 17/31 Realty, Inc.'s certificate of registration. Quasi-judicial agencies like the SEC, however, do not have the right to seek the review of an appellate court decision reversing any of its rulings because **it is not a real party in interest**.[45] Section 2, Rule 3 of the 1997 Rules on Civil Procedure reads:

SECTION 2. *Parties in Interest*. — **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**. Unless otherwise

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[45] See *Securities and Exchange Commission v. Court of Appeals*, G.R. Nos. 187702 & 189014, October 22, 2014.

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authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest. (2a)[46] (Emphases supplied)

Obviously, the SEC would not stand to be benefited or injured in the disposition of this case. Apart from the fact that its decision was reviewed by the appellate court, there is simply no justification for SEC to actively participate in the present proceedings. In fact, it was not even a party before the appellate court proceedings. That its decision was the subject of review by the appellate court and even here has, at most, made it a mere nominal party. Nothing more. A decent regard for judicial hierarchy bars it from suing against the adverse opinion of a higher court.[47]

As early as the 1980 case of *Turqueza v. Hernando*,[48] the court reminded trial judges, and quasi-judicial agencies for that matter, to refrain from taking an active participation in appellate proceedings where their dispositions were under attack, unless expressly directed so, *viz.*:

> The Court has heretofore reminded the judges of the lower courts that under Section 5 of Rule 65 of the Rules of Court, a judge whose order is challenged in an appellate court does not have to file any answer or take [an] active part in the proceeding unless expressly directed by order of this Court. It is the duty of the private respondent to appear and defend, both in his/her behalf and in behalf of the Court or judge whose order or decision is at issue. The judge should maintain a detached attitude from the case and should not waste his time by taking an active part in a proceeding which relates to official actuations in a case but should apply himself to his principal task of hearing and adjudicating the cases in his court. He is merely a nominal party to the case and has no personal interest nor personality therein.

In *Securities and Exchange Commission v. Court of Appeals*,[49] the Court resolved to expunge the petition filed by the SEC for

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[46] Rules of Court, 1997 Rules of Civil Procedure as Amended, April 8, 1997.

[47] See *Alcasid v. Samson*, 102 Phil. 735, 740 (1957).

[48] 186 Phil. 333, 341 (1980).

[49] Supra note 44.

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lack of capacity to file the suit because it was not a real party in interest.

In the same vein, the Court, in *Government Service Insurance System v. Court of Appeals*,[50] resolved to expunge the SEC's petition for lack of legal capacity to sue. The Court emphatically ruled that there was simply no plausible reason for the Court to deviate from a time-honored rule that preserves the purity of our judicial and quasi-judicial offices to accommodate the SEC's distrust and resentment of the appellate court's decision. Assuming there were rights or prerogatives peculiar to the SEC itself that the appellate court had countermanded, these can be vindicated in the petition for *certiorari* filed by GSIS, whose legal capacity to challenge the Court of Appeals decision was without question.

G.R. No. 240888

The SEC-CRMD properly assumed jurisdiction over Locsin-Garcia's letter-complaint.

SEC Resolution No. 359, series of 2010, authorizes the SEC-CRMD to revoke, after compliance with due process, certificates of incorporation of registered partnerships and corporations, *viz.*:

RESOLVED, [t]o **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

Based thereon, the SEC-CRMD is deemed to have properly taken cognizance of and resolved the letter complaint of Locsin-Garcia against AZ 17/31 Realty, Inc.

On the defects of the complaint.

Certification against forum shopping.

Section 3-5,[51] Rule III of the 2006 SEC Rules of Procedure mandates that the complaint before the SEC be accompanied by a certification against forum shopping:

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[50] 603 Phil. 676, 699 (2009).

[51] The 2006 Rules of Procedure of the Securities and Exchange Commission, December 21, 2006.

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Sec. 3-5. *Non-forum shopping*. – The complainant shall certify under oath that: (a) he has not commenced any action or filed any complaint involving the same subject matter or issues in any court, tribunal[,] or agency and, to the best of his knowledge, no other action is pending therein; (b) if there is such other pending action, a complete statement of its present status; and (c) if he should thereafter learn that the same or similar action has been filed or is pending, he shall report that fact within five (5) days from such knowledge to the operating department.

Failure to comply with any of the foregoing requirements shall result in the dismissal without prejudice of the complaint. The submission of a false certification or non-compliance with any of the undertakings enumerated in the preceding paragraph shall constitute indirect contempt of the Commission and may give rise to the imposition of administrative and criminal sanctions. If the acts of the party or his counsel constitute willful forum shopping, the same shall be considered a justifiable ground for the summary dismissal with prejudice of the action and constitute direct contempt of the Commission with the attendant administrative and criminal consequences. (Emphasis supplied)

Though mandatory, the requirement of certification against forum shopping is **not jurisdictional**.[52] Unquestionably, procedural rules are not to be simply disregarded as they insure an orderly and speedy administration of justice.[53] But the rule on non-forum shopping should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective or the goal of all rules of procedure — which is to achieve substantial justice as expeditiously as possible.[54] A liberal application of the rule may be justified where special circumstances or compelling reasons are present.[55]

In judicial proceedings, the Court has rebuked an overly strict application of the rules pertaining to certifications of non-forum shopping.[56] More so in quasi-judicial bodies, where proceedings

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[52] See *Pacquing v. Coca-Cola Philippines, Inc.*, 567 Phil. 323, 333 (2008).

[53] See *Latogan v. People*, G.R. No. 238298, January 22, 2020.

[54] See *Barcelona v. Court of Appeals*, 458 Phil. 626, 641 (2003).

[55] See *Palao v. Florentino III International, Inc.*, 803 Phil. 393, 404 (2017).

[56] Id. at 401.

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are unfettered by the strict application of the technical rules of procedure imposed in judicial proceedings.[57]

At any rate, Section 3-9, Rule III of the 2006 SEC Rules of Procedure provides that the Commission may, *motu proprio*, accept and take cognizance of a complaint filed under a different form in the interest of public service and social justice, or to protect the investing public.[58]

In *Huntington Steel Products, Inc. v. National Labor Relations Commission*,[59] the Court rejected petitioners' contention that the labor arbiter did not acquire jurisdiction over the case for failure to include the certificate of non-forum shopping in the complaint. This contention, according to the Court, found no support in law and in jurisprudence. The rule on non-forum shopping is mandatory but not jurisdictional, as jurisdiction over the subject or nature of the cause of action is conferred by law.

Cause of Action.

A cause of action is the act or omission by which a party violates a right of another.[60] It contains the following essential elements: (1) a right in favor of the plaintiff by whatever means and whatever law it arises; (2) the correlative obligation of the defendant to respect such right; and (3) the act or omission of the defendant violates the right of the plaintiff. If any of these elements is absent, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action.[61]

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[57] Id.

[58] The 2006 Rules of Procedure of the Securities and Exchange Commission, December 21, 2006.

[59] 485 Phil. 227, 237 (2004).

[60] Section 2, Rule 2 of the Rules of Court, 1997 Rules of Civil Procedure as Amended, April 8, 1997.

[61] See *National Spiritual Assembly of the Baha'is of the Philippines v. Pascual*, 690 Phil. 442, 446 (2012); see also, Section 1. *Grounds*. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
x x x x
(g) That the pleading asserting the claim states no cause of action. (Rules of Court, Rule 16, Sec. 1(g)).

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A petition for revocation of a corporation's certificate of registration is an action calling for the exercise of the SEC's regulatory power. The issuance of the pertinent certificates gave corporate life, the withdrawal or revocation of their certificates would necessarily mean corporate death.[62]

Here, the SEC took cognizance of Locsin-Garcia's letter complaint in the interest of the investing public and in the performance of its duty under PD No. 902-A — 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.[63] This notwithstanding the protestation of AZ 17/31 Realty, Inc. that Locsin-Garcia has been its bitter enemy for a long time and is simply out to get even or gain leverage in the quieting of title case it filed against her. Nor does her status as a non-stockholder of the company divest the SEC of its jurisdiction to exercise its regulatory power over AZ 17/31 Realty, Inc. and its reported violation under the law. So must it be.

We now proceed to the substantive issue.

Fraud in procuring certificate of registration, defined.

Fraud, in general, is the voluntary execution of a wrongful act, or a willful omission, knowing and intending the effects which naturally, and necessarily arise from such act or omission.[64]

Fraud is of two kinds: 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

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[62] See *Ridon v. AXN Networks Phils., Inc.*, G.R. Nos. 210885 & 210886, August 26, 2014.

[63] 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, Presidential Decree No. 902-A, March 11, 1976.

[64] See *Legaspi Oil Co., Inc. v. Court of Appeals*, 296 Phil. 30, 33 (1993).

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confidence, even though the act is not done or committed with an actual design to commit positive fraud or injury upon other persons.[65]

A corporation's certificate of registration may be revoked or its existence suspended on any of the following grounds under PD No. 902-A:

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

x x x x

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:

1. Fraud in procuring its certificate of registration;

2. Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public;

3. Refusal to comply or defiance of any lawful order of the Commission restraining commission of acts which would amount to a grave violation of its franchise;

4. Continuous inoperation for a period of at least five (5) years;

5. Failure to file by-laws within the required period;

6. Failure to file required reports in appropriate forms as determined by the Commission within the prescribed period;[66]

But what exactly constitutes fraud in procuring a certificate of registration?

For the Court, fraud in procuring a certificate of registration contemplates two (2) situations:

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[65] See *Heirs of Roxas v. Court of Appeals*, 337 Phil. 41, 50–51, (1997).

[66] 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, Presidential Decree No. 902-A, March 11, 1976.

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1.) A company was incorporated with the specific and dominant intention of pursuing a fraudulent business purpose;[67] and

2.) Misrepresentations in the Articles of Incorporation to meet the minimum qualifications for incorporation.

The **first** contemplates a situation where the company's incorporation did not pertain to a dominant purpose of pursuing a *bona fide* commercial activity, but rather, its incorporation sought to abuse the incorporation process to the financial advantage of its controller and to the detriment of third parties. Essentially, this is exploitation and taking undue advantage of the corporate form and process.[68]

The **second** one pertains to the compliance with the minimum requirements for incorporation. We are guided by Batas Pambansa (*BP*) Blg. 68, the Corporation Code of the Philippines[69] - the law applicable in this case. Examples of these include, but not limited to - making it appear during incorporation that:

i. there were five incorporators when in truth and in fact, there were only four or less qualified incorporators;

ii. that at least twenty-five (25%) percent of the authorized capital stock of the corporation has been subscribed, and at least twenty-five (25%) percent of the total subscription has been fully paid in actual cash and/or in property, the fair valuation of which is equal to at least twenty-five (25%) percent of the said subscription, such paid-up capital being not less than five thousand (₱5,000.00) pesos when in truth and in fact, there was none.

We do not find any of these indicators here.

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[67] Griffin, Stephen (2015), Disturbing corporate personality to remedy a fraudulent incorporation: an analysis of the piercing principle. Northern Ireland Legal Quarterly. https://nilq.qub.ac.uk/index.php/nilq/article/view/157/117 <Accessed on March 31, 2022>.

[68] Id.

[69] Batas Pambansa Blg. 68, May 1, 1980.

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For one, AZ 17/31 Realty, Inc. was incorporated 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 to improve, manage, or otherwise dispose of buildings, houses, apartment, and other structures of whatever kind, together with their appurtenances. Obviously, it was not incorporated with the intent to undertake fraudulent purposes. As a close corporation,[70] it neither listed its stocks in any stock exchange nor made any public offering of any of its stock of any class.

For another, AZ 17/31 Realty, Inc. had seven (7) incorporators as reflected in its AOI. Even though Pacita is removed as an incorporator, the company will still have six (6) remaining qualified incorporators. In fact, Pacita's monetary contribution was not even necessary to meet the required minimum paid-up capital of the company. Antonio, Jr.'s contribution alone already accounted for ₱18,682,000.00 – way above the required 25% minimum paid-up capital reckoned from its ₱22,000,000.00 authorized capital stock.

SEC Resolution No. 359, series of 2010, enumerates what constitutes fraud in procuring a certificate of registration:

RESOLVED, [t]o **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:

1. If companies fail to formally organize and commence its operation within two (2) years from the date of its incorporation;
2. If companies have been inoperative for a continuing period of at least five (5) years;
3. If companies fail to file its by-laws within the prescribed period; or
4. If companies fail to file/register for a period of at least five (5) years any of the following:
    i. Financial Statements;

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[70] Section 96, Title XII, Corporation Code of the Philippines, Batas Pambansa Blg. 68, May 1, 1980.

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ii. General Information Sheets; and
iii. Stock and Transfer Book/Membership Book.

5. **If any of the incorporators is already deceased at the time of incorporation**;
6. If any of the incorporators is a minor at the time of incorporation;
7. **If any of the incorporators submitted spurious or falsified documents to prove compliance with the requirements for registration; and**
8. **If any of the incorporators submits false addresses and Tax Identification Numbers**. (Emphases supplied)

Though persuasive, this enumeration does not ripen to a doctrine of practical construction, *sans* judicial acquiescence.[71] While Pacita's inclusion as an incorporator may be the subject of a criminal case for fraud under the Revised Penal Code, it does not equate to fraud contemplated under the Corporation Code for dissolution of a corporation.

AZ 17/31 Realty, Inc. should have been given reasonable time to amend or correct the erroneous inclusion of Pacita as incorporator.

Though we hold that the erroneous inclusion of Pacita as incorporator does not call for the immediate dissolution of AZ 17/31 Realty, Inc. this does not mean, however, that we clothe authority to said inclusion. For it does not escape us that a deceased person like Pacita has no legal capacity to enter into contractual relations and cannot be the subject of a right.[72] The pertinent provisions of the Civil Code ordain:

ARTICLE 37. Juridical capacity, which is the fitness to be the subject of legal relations, is inherent in every natural person and is lost only through death. Capacity to act, which is the power to do acts with legal effect, is acquired and may be lost.[73] (n)

ARTICLE 42. Civil personality is extinguished by death.

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[71] *Guingona, Jr. v. Gonzales*, 292 Phil. 327, 335 (1993).

[72] See *Resurreccion v. Javier*, 63 Phil. 599, 600 (1936).

[73] Civil Code of the Philippines, Republic Act No. 386, June 18, 1949.

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The effect of death upon the rights and obligations of the deceased is determined by law, by contract and by will.[74] (32a)

Juridical capacity, which is the fitness to be the subject of legal relations, is lost through death.[75] Except to answer for debts legally demandable upon the estate, a deceased person cannot anymore enter into any contractual relation.

Further, Section 10, Title II of BP Blg. 68 or the Corporation Code (the law applicable in this case) provides for the qualifications of incorporators:

TITLE II
Incorporation and Organization of Private Corporations

SECTION 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. 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. (6a)[76]

Clearly, an incorporator must be a **natural person**. He or she is required to be of legal age **and** must be a signatory to the AOI, among others. The following provisions of the Corporation Code require the signatures of the incorporators:

Title I

SECTION 5. *Corporators and Incorporators, Stockholders and Members*. — Corporators are those who compose a corporation, whether as stockholders or as members. **Incorporators are those stockholders or members mentioned in the articles of incorporation as originally forming and composing the corporation and who are signatories thereof**.

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[74] Id.

[75] See *Dawson v. Register of Deeds of Quezon City*, 356 Phil. 1037, 1046 (1998).

[76] Corporation Code of the Philippines, Batas Pambansa Blg. 68, May 1, 1980.

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Corporators in a stock corporation are called stockholders or shareholders. Corporators in a non-stock corporation are called members.[77] (4a)

SECTION 14. *Contents of Articles of Incorporation*. — All corporations organized under this Code shall file with the Securities and Exchange Commission articles of incorporation in any of the official languages, **duly signed and acknowledged by all of the incorporators**, containing substantially the following matters, except as otherwise prescribed by this Code or by special law:

x x x

5. The names, nationalities and residences of the incorporators;[78] x x x (Underline and emphases supplied)

Obviously, Pacita, who was already dead three and a half (3 ½) years before the incorporation of AZ 17/31 Realty, Inc. was not qualified to be an incorporator.

We cannot simply ignore or sweep this under the rug.

Definitely, the name of Pacita should be dropped as an incorporator and her subscription, including its accrued earnings, returned to her estate. Instead of hastily ordering the dissolution of AZ 17/31 Realty, Inc., the SEC should have ordered it to amend its AOI pursuant to Section 103[79] of BP Blg. 68[80] in relation to Section 17 of the same law, *viz.*:

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[77] Id.

[78] Id.

[79] **SECTION 103**. *Amendment of Articles of Incorporation*. — Any amendment to the articles of incorporation which seeks to delete or remove any provision required by this Title to be contained in the articles of incorporation or to reduce a quorum or voting requirement stated in said articles of incorporation shall not be valid or effective unless approved by the affirmative vote of at least two-thirds (2/3) of the outstanding capital stock, whether with or without voting rights, or of such greater proportion of shares as may be specifically provided in the articles of incorporation for amending, deleting or removing any of the aforesaid provisions, at a meeting duly called for the purpose. (Corporation Code of the Philippines, Batas Pambansa Blg. 68, May 1, 1980).

[80] Now Section 102 of the Revised Corporation Code.

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SECTION 17. *Grounds When Articles of Incorporation or Amendment May be Rejected or Disapproved*. — The Securities and Exchange Commission may reject the articles of incorporation or disapprove any amendment thereto if the same is not in compliance with the requirements of this Code: ***Provided*, That the Commission shall give the incorporators a reasonable time within which to correct or modify the objectionable portions of the articles or amendment**. The following are grounds for such rejection or disapproval:

1. That the articles of incorporation or any amendment thereto is not substantially in accordance with the form prescribed herein;

2. That the purpose or purposes of the corporation are patently unconstitutional, illegal, immoral, or contrary to government rules and regulations;

3. That the Treasurer's Affidavit concerning the amount of capital stock subscribed and/or paid is false;

4. That the required percentage of ownership of the capital stock to be owned by citizens of the Philippines has not been complied with as required by existing laws or the Constitution.

No articles of incorporation or amendment to articles of incorporation of banks, banking and quasi-banking institutions, building and loan associations, trust companies and other financial intermediaries, insurance companies, public utilities, educational institutions, and other corporations governed by special laws shall be accepted or approved by the Commission unless accompanied by a favorable recommendation of the appropriate government agency to the effect that such articles or amendment is in accordance with law.[81]

For compliance purposes, we deem that a period of six months is reasonable. The SEC ought to strictly monitor AZ 17/31 Realty, Inc.'s compliance with this Decision and submit its report within thirty days from compliance. Notably, non-compliance will merit AZ 17/31 Realty, Inc.'s revocation of its certificate of registration pursuant to Section 144[82] of BP Blg. 68.

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[81] Corporation Code of the Philippines, Batas Pambansa Blg. 68, May 1, 1980.

[82] **SECTION 144**. *Violations of the Code*. — Violations of any of the provisions of this Code or its amendments not otherwise specifically penalized therein

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ACCORDINGLY, the petition of the Securities and Exchange Commission in **G.R. No. 239010 is DENIED** on ground that it is not a real party in interest.

The petition of Azucena Locsin-Garcia in **G.R. No. 240888** is also **DENIED** and the **Decision** dated April 24, 2018 and **Resolution** dated July 16, 2018 of the Court of Appeals in CA-G.R. SP No. 152300 are **AFFIRMED with MODIFICATION**. AZ 17/31 Realty, Inc. is **ORDERED** to:

1.) **AMEND** its Articles of Incorporation and drop Pacita Javier as incorporator within six (6) months from notice of this Decision; and

2.) **RETURN** the property of Pacita Javier, including its accrued earnings, to her estate.

The Securities and Exchange Commission is **ORDERED** to **STRICTLY MONITOR** AZ 17/31 Realty, Inc.'s compliance with this Decision and to **SUBMIT** its **REPORT** within thirty (30) days from the said compliance.

SO ORDERED.

M. Lopez, J. Lopez, and *Kho, Jr.*, *JJ.*, concur.

Leonen, S.A.J., see separate dissenting opinion.

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shall be punished by a fine of not less than one thousand (₱1,000.00) pesos but not more than ten thousand (₱10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Securities and Exchange Commission: Provided, That such dissolution shall not preclude the institution of appropriate action against the director, trustee or officer of the corporation responsible for said violation: Provided, further, That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code. (190-1/2a) (Corporation Code of the Philippines, Batas Pambansa Blg. 68, May 1, 1980).

APPEARANCES OF COUNSEL

Office of the Solicitor General for *Securities and Exchange Commission.*

Valmores Madroño and *Associates* for A. Locsin-Garcia.

Angara Abello Concepcion Regala & Cruz for AZ 17/31 Realty, Inc.

DISSENTING OPINION

LEONEN, *J.*:

At issue here is the deceased Pacita Javier (Javier)'s inclusion as an incorporator for respondent AZ 17/31 Realty, Inc.'s incorporation. The majority did not deem this as fraud, saying that even without Javier's name, there were six other incorporators and the minimum paid-up capitalization requirements were followed.[1] It declined to consider Securities and Exchange Commission Resolution No. 359, series of 2010 (SEC Resolution No. 359), saying that this did "not ripen to a doctrine of practical construction, *sans* judicial acquiescence."[2]

For the majority, then, Javier's inclusion may be a ground for criminal liability, but it cannot be a ground to dissolve the incorporation.[3] Instead, the corporation supposedly should be given a reasonable time of at least six months to correct the erroneous inclusion.[4]

I dissent. Deliberately including a deceased incorporator who died over three years before the incorporation is a misrepresentation and a violation of the Corporation Code. It is a fraudulent act that should be dealt with by the Securities and Exchange Commission.

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1 *Ponencia*, p. 17.

2 Id., citing *Guingona, Jr. v. Gonzales*, 292 Phil. 327 (1993) [Per J. Campos, Jr., En Banc].

3 Id.

4 Id. at 18–21.

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I

The Securities and Exchange Commission is the regulatory agency exercising absolute jurisdiction in its control and supervision in all corporations.[5] It has original and exclusive jurisdiction in its adjudication of cases involving intra-corporation disputes, the election or appointments of corporate officers, and other cases involving devices or schemes amounting to fraud or misrepresentation.[6]

Section 6(i) of Presidential Decree No. 902-A authorizes the Commission to suspend or revoke a corporation's certificate of registration when fraud attended its procurement.[7] To effect its

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[5] Presidential Decree No. 902-A (1976), sec. 3 states:
Section 3. The Commission shall have absolute jurisdiction, supervision and control over all corporations, partnerships or associations, who are the grantees of primary franchise and/or a license or permit issued by the government to operate in the Philippines; and in the exercise of its authority, it shall have the power to enlist the aid and support of any and all enforcement agencies of the government, civil or military.

[6] Presidential Decree No. 902-A (1976), sec. 5 states:
Section 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving.

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;
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;
c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

[7] Presidential Decree No. 902-A (1976), sec. 6(i)(1) states:
Section 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:

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mandate, the Commission deputized its Company Registration and Monitoring Department in SEC Resolution No. 359, which states:

> RESOLVED, [t]o 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:
>
> 1. If companies fail to formally organize and commence its operation within two (2) years from the date of its incorporation;
> 2. If companies have been inoperative for a continuing period of at least five (5) years;
> 3. If companies fail to file its by-laws within the prescribed period; or
> 4. *If companies fail to file/register for a period of at least five (5) years any of the following*:
>   *i. Financial Statements*;
>   *ii. General Information Sheets; and*
>   *iii. Stock and Transfer Book/Membership Book.*
> 5. *If any of the incorporators is already deceased at the time of incorporation*;
> 6. *If any of the incorporators is a minor at the time of incorporation*;
> 7. *If any of the incorporators submitted spurious or falsified documents to prove compliance with the requirements for registration; and*
> 8. *If any of the incorporators submits false addresses and Tax Identification Numbers*. (Emphasis supplied)

However, the majority characterized SEC Resolution No. 359 as merely persuasive and did "not ripen to a doctrine of practical construction, *sans* judicial acquiescence."[8] It cited *Guingona, Jr. v. Gonzales*,[9] where a practice in the Senate was not considered

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. . . .

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:
1. Fraud in procuring its certificate of registration[.]

[8] *Ponencia*, p. 17.

[9] 292 Phil. 327 (1993) [Per J. Campos, Jr., En Banc].

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a precedent in interpreting the constitutional provision on proportional representation in the Commission on Appointments.[10]

I disagree. *Guingona, Jr.* is inapplicable since the subject of the construction here is a statutory provision, and not the Constitution.

The doctrine is settled that without prior judicial interpretation of a statutory provision, this Court should give respect to administrative construction given the administrative agencies' expertise and experience:

> Considering that the statutory provisions in question have not been the subject of previous judicial interpretation, then the application of the doctrine of "judicial respect for administrative construction," would, initially, be in order.
>
> > "Only where the court of last resort has not previously interpreted the statute is the rule applicable that courts will give consideration to construction by administrative or executive departments of the state."
> >
> > "The formal or informal interpretation or practical construction of an ambiguous or uncertain statute or law by the executive department or other agency charged with its administration or enforcement is entitled to consideration and the highest respect from the courts, and must be accorded appropriate weight in determining the meaning of the law, especially when the construction or interpretation is long continued and uniform or is contemporaneous with the first workings of the statute, or when the enactment of the statute was suggested by such agency."
>
> . . . .
>
> Considering that the Bureau of Customs is the office charged with implementing and enforcing the provisions of our Tariff and Customs Code, the construction placed by it thereon should be given controlling weight.
>
> > "In applying the doctrine or principle of respect for administrative or practical construction, the courts often refer to several factors which may be regarded as bases of the principle, as factors leading the courts to give the principle controlling weight in particular instances, or as independent rules in themselves. These

[10] Id. at 335.

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> factors are the respect due the governmental agencies charged with administration, their competence, expertness, experience, and informed judgment and the fact that they frequently are the drafters of the law they interpret; that the agency is the one on which the legislature must rely to advise it as to the practical working out of the statute, and practical application of the statute presents the agency with unique opportunity and experiences for discovering deficiencies, inaccuracies, or improvements in the statute[.]"[11] (Citations omitted)

Administrative authorities are given rule-making powers to fill in details of the law for its implementation, accounting for the policies of the law and conforming to the terms and standards it prescribes.[12] Congress expressly authorizes the Securities and Exchange Commission to promulgate rules and regulations in the performance of its duties.[13] In line with this, the Commission promulgated SEC Resolution No. 359.

Without a showing that the Resolution exceeded the scope of the Commission's delegated legislative power, this Court should uphold its exercise.[14] In any case, the parties do not appear to assail its validity. Thus, the majority should have recognized SEC Resolution No. 359 as the Commission's exercise of its rule-making power and a contemporaneous construction of "fraud in procuring [a corporation's] certificate of registration" in Presidential Decree No. 902-A, Section 6(i).

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[11] *Asturias Sugar Central, Inc. v. Commissioner of Customs*, 140 Phil. 20, 25–26 (1969) [Per J. Castro, En Banc].

[12] *Securities and Exchange Commission v. Interport Resources Corporation*, 588 Phil. 651, 674 (2008) [Per J. Chico-Nazario, En Banc].

[13] The circumstances here are governed by Batas Pambansa Blg. No. 68, or the Corporation Code then effective in 1980. CORP. CODE (1980), sec. 143 states:
Section 143. Rule-making Power of the Securities and Exchange Commission. — The Securities and Exchange Commission shall have the power and authority to implement the provisions of this Code, and to promulgate rules and regulations reasonably necessary to enable it to perform its duties hereunder, particularly in the prevention of fraud and abuses on the part of the controlling stockholders, members, directors, trustees or officers. (n)

[14] *The Chairman and Executive Director, Palawan Council for Sustainable Development v. Lim*, 793 Phil. 690 (2016) [Per J. Bersamin, First Division].

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The Securities and Exchange Commission clearly defined the acts of fraud warranting the revocation of a corporation's certificate of registration. While SEC Resolution No. 359 did not exactly use this nomenclature, the majority should have given effect to its enumeration as the Commission's contemporaneous construction of the phrase, "fraud in procuring [a corporation's] certificate of registration."[15] Section 6(i)(5) to Section 6(i)(8) have elements relating to fraud in the procurement of a certificate of incorporation, while the other items refer to nonuse of the corporate charter, continuous nonoperation of the corporation,[16] and failure to file the required corporate documents.[17]

The construction of Section 6(i)(1) of Presidential Decree No. 902-A through SEC Resolution No. 359 should be upheld unless there is a showing of clear conflict with the Constitution and the law.[18] Given the valid exercise of the Securities and Exchange Commission's rule-making power, the majority should not have substituted this with its own interpretation.

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[15] Presidential Decree No. 902-A (1976), sec. 6(i).

[16] CORP. CODE (1980), sec. 22 provides:
Section 22. Effects of Non-use of Corporate Charter and Continuous Inoperation of a Corporation. — If a corporation does not formally organize and commence the transaction of its business or the construction of its works within two (2) years from the date of its incorporation, its corporate powers cease and the corporation shall be deemed dissolved. However, if a corporation has commenced the transaction of its business but subsequently becomes continuously inoperative for a period of at least five (5) years, the same shall be a ground for the suspension or revocation of its corporate franchise or certificate of incorporation. (19a)
This provision shall not apply if the failure to organize, commence the transaction of its businesses or the construction of its works, or to continuously operate is due to causes beyond the control of the corporation as may be determined by the Securities and Exchange Commission.

[17] *See* CORP. CODE (1980), secs. 46, 74, and 141.

[18] *Republic v. Provincial Government of Palawan*, G.R. Nos. 170867 and 185941, January 21, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66065> [Per J. Leonen, En Banc].

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II

A corporation has a separate legal personality from its corporate officers and stockholders.[19] As juridical entities, corporations enjoy privileges that are unavailable to natural persons.[20] In exchange for the recognition of a corporation's status, its proponents must comply with the incorporation requirements.

A certificate of incorporation is not just a document of formality that the Securities and Exchange Commission issues upon a corporation's submission and compliance with all its requirements. Its issuance marks the beginning of corporate life.[21] It bestows all rights, powers, attributes, and properties on a corporation under relevant laws.[22] Thus, incorporation is a contract between the State and the incorporators, or those "originally forming and composing the corporation and who are signatories."[23]

This Court could have given more significance to the incorporation process by recognizing the Securities and Exchange Commission's imposition of the gravest penalty for violating an essential requirement for a corporation's inception. Designating Javier as an incorporator was not a singular act. It was composed

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[19] *Zomer Development Corporation v. Special Twentieth Division of the Court of Appeals, Cebu*, G.R. No. 194461, January 7, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66131> [Per J. Leonen, En Banc].

[20] Id.

[21] *Missionary Sisters of Our Lady of Fatima v. Alzona*, G.R. No. 224307, August 6, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64484> [Per J. Reyes, Second Division].

[22] CORP. CODE (1980), sec. 2 states:
Section 2. Corporation Defined. — A corporation is an artificial being created by operation of law, having the right of succession and the powers, attributes and properties expressly authorized by law or incident to its existence. (2)

[23] CORP. CODE (1980), sec. 5 states:
Section 5. Corporators and Incorporators, Stockholders and Members. — Corporators are those who compose a corporation, whether as stockholders or as members. Incorporators are those stockholders or members mentioned in the articles of incorporation as originally forming and composing the corporation and who are signatories thereof.
Corporators in a stock corporation are called stockholders or shareholders. Corporators in a non-stock corporation are called members. (4a)

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of multiple and deliberate actions showing that the incorporators blatantly disregarded the basic requirement of incorporation.

A fundamental requirement of incorporation is that those forming the corporation must be natural persons.[24] In addition, an incorporator must own or be subscribed to at least one share of the corporation's capital stock.[25] Both ownership and subscription involve contractual relations between the incorporator and the corporation.[26] These basic requirements also apply to directors and officers of the corporation.[27]

As the majority notes, death extinguishes a person's civil personality and makes them unfit to be the subject of contractual relations.[28] A deceased person cannot be an incorporator, shareholder, or director of a corporation.

Here, Javier was made to appear to have all three titles upon the incorporation of AZ 17/31 Realty, Inc. Her inclusion as one of the incorporators falls squarely within the acts under SEC Resolution No. 359, warranting the revocation of AZ 17/31 Realty, Inc.'s Certificate of Incorporation. Yet, the majority said that the corporation should have been given time to amend its Articles of Incorporation, per Section 103 in relation to Section 17 of the governing Corporation Code.[29]

Again, I disagree.

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[24] CORP. CODE (1980), sec. 10 states:
Section 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. Each of the incorporators of a stock corporation most own or be a subscriber to at least one (1) share of the capital stock of the corporation. (6a)

[25] CORP. CODE (1980), sec. 10.

[26] *See Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.*, 607 Phil. 227 (2009) [Per J. Carpio, First Division].

[27] CORP. CODE (1980), secs. 23 and 25.

[28] *Ponencia*, p. 18, citing CIVIL CODE, art. 42.

[29] Id. at 19–20, *citing* CORP. CODE (1980).

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Section 17 of the then Corporation Code does not contemplate fraud in the procurement of a certificate of registration. It states in part:

> SECTION 17. Grounds When Articles of Incorporation or Amendment May be Rejected or Disapproved. — The Securities and Exchange Commission may reject the articles of incorporation or disapprove any amendment thereto if the same is not in compliance with the requirements of this Code: Provided, That the Commission shall give the incorporators a reasonable time within which to correct or modify the objectionable portions of the articles or amendment. The following are grounds for such rejection or disapproval:
>
> 1. That the articles of incorporation or any amendment thereto is not substantially in accordance with the form prescribed herein[.]

The inclusion of Javier as an incorporator is not a mere deficiency of form. From the face of the documents submitted for incorporation, the Securities and Exchange Commission could not have known that one of the designated incorporators has long been dead. Javier's inclusion was deliberate and calculated to deceive the Commission into approving and issuing the Certificate of Incorporation.

In *Republic v. Mega Pacific eSolutions, Inc.*,[30] this Court explained fraud as follows:

> Fraud is a generic term that is used in various senses and assumes so many different degrees and forms that courts are compelled to content themselves with comparatively few general rules for its discovery and defeat. For the same reason, the facts and circumstances peculiar to each case are allowed to bear heavily on the conscience and judgment of the court or jury in determining the presence or absence of fraud. In fact, the fertility of man's invention in devising new schemes of fraud is so great that courts have always declined to define it, thus, reserving for themselves the liberty to deal with it in whatever form it may present itself.
>
> *Fraud may be characterized as the voluntary execution of a wrongful act or a wilful omission, while knowing and intending the effects that*

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[30] 788 Phil. 160 (2016) [Per J. Sereno, First Division].

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naturally and necessarily arise from that act or omission. In its general sense, fraud is deemed to comprise anything calculated to deceive—including all acts and omission and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed—resulting in damage to or in undue advantage over another. Fraud is also described as embracing all multifarious means that human ingenuity can device, and is resorted to for the purpose of securing an advantage over another by false suggestions or by suppression of truth; and it includes all surprise, trick, cunning, dissembling, and any other unfair way by which another is cheated.

While fraud cannot be presumed, it need not be proved by direct evidence and can well be inferred from attendant circumstances. Fraud by its nature is not a thing susceptible of ocular observation or readily demonstrable physically; it must of necessity be proved in many cases by inferences from circumstances shown to have been involved in the transaction in question.[31] (Emphasis supplied, citations omitted)

Here, it was not disputed that Javier was already dead three and a half years prior to her inclusion as one of the incorporators. Enrique de Zuzuarregui,[32] one of the incorporators, reported and registered her death.[33] However, the Securities and Exchange Commission *En Banc* noted that there were signatures affixed above Javier's name in the Articles of Incorporation and By-Laws submitted.[34] It was deliberately made to appear that Javier was still alive when the documents were executed. Her signature was falsified to deceive the Commission to issue the Certificate of Incorporation.

In addition, Javier was not only given one stock, the minimum share required under Section 10 of the governing Corporation Code. It was made to appear that she had 1,437 shares or 6.67% of the subscribed shares of AZ 17/31 Realty, Inc.,[35] and that she paid ₱1,437,000.00 to the corporation. The incorporators manipulated the corporation's subscription of stocks and receipt of payment for these shares.

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[31] Id. at 187–188.

[32] *Ponencia*, p. 4.

[33] Zuzuaregi in other parts of the *rollo*.

[34] CA Decision, p. 4.

[35] *Ponencia*, p. 2.

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To add to the company's misrepresentations, the majority noted that the Articles of Incorporation stated that the incorporators "comprised the company's first Board of Directors."[36] Thus, in including Javier in the list of incorporators, she was also made to appear to have been included in the first Board of Directors of AZ 17/31 Realty, Inc.

The majority justified Javier's inclusion as inconsequential in the corporation's registration since there were six other incorporators and her contribution in the paid-up capital was insignificant.[37]

This is wrong. Quite the contrary, the fraudulent acts show a deliberate, blatant disregard to the most basic requirement of civil capacity of all of its incorporators—one that cannot be excused so easily.

Incorporation is a contract with the government by which a legal fiction is created upon a certificate of incorporation's issuance. It is a privilege conferred by law. Its requirements should be strictly construed against those applying for the privilege. We should not allow these to be mere formalities that may easily be contravened with minimum efforts. That AZ 17/31 Realty, Inc. is among the top taxpayers in Quezon City and the national government[38] should not excuse the fraud involved in its incorporation.

The remaining incorporators attributed the fraudulent act solely to Antonio de Zuzuarregui, Jr., claiming that they were unaware of it.[39] I do not believe their excuse. Having signed the Articles of Incorporation and other corporate documents, they could not feign ignorance of Javier's inclusion in the list of incorporators. Their signatures were tantamount to their acquiescence to the fraud.

ACCORDINGLY, I dissent.

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[36] Id. at 3.

[37] Id. at 10.

[38] SEC *En Banc* Decision, p. 3.

[39] *Ponencia*, p. 5.