

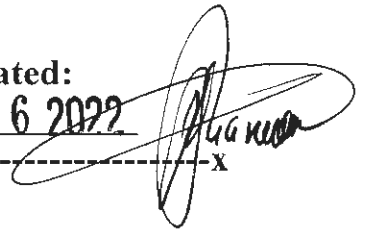
SECOND DIVISION

G.R. No. 239010 – SECURITIES AND EXCHANGE COMMISSION,
Petitioner, v. AZ 17/31 REALTY, INC., Respondent.

G.R. No. 240888 – AZUCENA LOCSIN-GARCIA, *Petitioner, v. AZ*
17/31 REALTY, INC., Respondent.

Promulgated:

JUL 06 2022



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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.

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

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.

⁵ Presidential Decree No. 902-A (1976), sec. 3 states:



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 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;*

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:

....

- 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[.]

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 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.

⁸ *Ponencia*, p. 17.

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

¹⁰ *Id.* at 335.

“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 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).

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)

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].

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

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.

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

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].

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

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 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.

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

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)

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 must 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).

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 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 devise, 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

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

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.

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

³¹ Id. at 187–188.

³² *Ponencia*, p. 4.

³³ Zuzuarregui in other parts of the *rollo*.

³⁴ CA Decision, p. 4.

³⁵ *Ponencia*, p. 2.

³⁶ Id. at 3.

³⁷ Id. at 10.

national government³⁸ 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.



MARVIC M.V.F. LEONEN
Senior Associate Justice

³⁸ SEC *En Banc* Decision, p. 3.

³⁹ *Ponencia*, p. 5.