

## **SPECIAL SEVENTEENTH DIVISION**

**[ CA-G.R. SP NO. 134005, June 26, 2014 ]**

**BAE MYUNG HEE, HONG JONGWOOK, HONG SANGWOOK, PARK SEUNG HA, LEE EUNSUK AND MARY ANN MENDOZA, PETITIONERS, VS. HON. RICHARD A. PARADEZA, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF OLONGAPO CITY, BRANCH 72 AND GLOBAL DAEIL SUBIC, INC., DOING BUSINESS UNDER THE NAME AND STYLE OF AMERICAN INTERNATIONAL SCHOOL OF SUBIC, REPRESENTED BY LEE SANGEOK (AKA JAMES LEE), RESPONDENTS.**

### **D E C I S I O N**

**BATO, JR., J.:**

This petition for certiorari and prohibition with urgent prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction seeks to nullify the proceedings on the ground of lack of jurisdiction and the dismissal of SEC Case No. 13-002 entitled: "*Global Daeil Subic, Inc. (doing business under the name and style of American International School of Subic), represented by Lee Sangeok (aka James Lee) vs. Bae Myung Hee, Hong Jong Wook, Hong Song Wook, Park Seung Ha, Lee Eun Suk, Mary Ann Mendoza, John Does.*"

Specifically, Bae Myung Hee, Hong Jongwook, Hong Sangwook, Park Seung Ha, Lee Eun Suk, and Mary Ann Mendoza (hereinafter collectively referred to as petitioners) seek to nullify and set aside the following: i) the Order and Amended Order, both dated December 20, 2013, which granted the issuance of a Temporary Restraining Order; ii) the Order dated January 14, 2014, which granted the issuance of a Writ of Preliminary Injunction; iii) the Order dated January 15, 2014 denying petitioners' Motion for Inhibition (*Ex Abudanti Ad Cautelam*); and iv) any Order that may have been issued or will be issued in the meantime by the Honorable Judge Richard A. Paradeza (hereinafter referred to as respondent Judge) of the Regional Trial Court of Olongapo City, Branch 72.<sup>[1]</sup> Also, petitioners seek to prohibit respondent Judge from assuming jurisdiction over SEC Case No. 13-002.

As culled from the pleadings and annexes submitted by the parties, the factual and procedural antecedents are as follows:

On February 14, 2012, Global Daeil Subic, Inc. (GDSI for short), was registered with the Securities and Exchange Commission (SEC) to primarily "establish and operate an International educational institution or learning center which shall provide courses of study in PRE-ELEMENTARY, ELEMENTARY and SECONDARY EDUCATION subject to the laws of the Philippines."<sup>[2]</sup> As stated in the third paragraph of the Articles of Incorporation, the principal office of the corporation is located at "FORMER LEGENDA SUITES HOTEL COMPOUND, CUBI AREA, SUBIC BAY FREEPORT ZONE."<sup>[3]</sup> The authorized capital stock of the corporation is Twenty Million Pesos (Php20,000,000.00) divided into 200,000 shares with a par value of Php100.00 per

share. The incorporators of the corporation were all Korean nationals, namely: Kim Bangjun, Bae Myung Hee, Gil Hong Ok, Park Sungkeun and Lee Sangeok who subscribed 500 shares each and paid the sum of Php50,000.00 each for their subscription. GDSI subscribed 47,500 shares and paid the sum of Php4,750,000.00 bringing the total subscription to 50,000 or 25% of the authorized capital stock.<sup>[4]</sup> The aforementioned incorporators were the "first directors who are to serve until their successors are elected and qualified as provided by the by-laws."<sup>[5]</sup> In the By-Laws of the corporation, March 31st of each year is the annual regular meeting of stockholders and stockholders representing majority of the outstanding capital stock or the Board of Directors may call for the special meeting of stockholders.<sup>[6]</sup> Under Section 2, Article III of the By-Laws, "[T]he board of Directors shall be elected during each regular meeting of stockholders and shall hold office for one (1) year and until their successors are elected and qualified."<sup>[7]</sup>

As shown in the General Information Sheet<sup>[8]</sup> (GIS) filed with the SEC, as of May 2, 2013, the Officers and Directors of GDSI were as follows: 1) Kim Bangjun, President; 2) Bae Myung Hee, Gil Hong Ok, Park Sungkeon, and Lee Sangeok, Directors; and 3) Lorena De Dios, Corporate Secretary/Chief Finance Officer.<sup>[9]</sup> Also, in the GIS filed with the SEC, on October 31, 2013, it appeared that GDSI's subscription remains the same, but the shares subscribed by each incorporators (Kim Bangjun, Bae Myung Hee, Gil Ong Ok, Park Sungkeon), except Lee Sangkeok and Yoon Suktae who subscribed 2,500 shares each and paid the amount of Php25,000.00 each, were increased from 500 shares to 5,000; however, they paid only the sum of Php50,000.00 each.<sup>[10]</sup> Added in the GIS is the subscription of 150,000 shares and payment of Php150,000,000.00 by AIS KOREA INC.<sup>[11]</sup>

In a letter<sup>[12]</sup> dated October 21, 2013, addressed to GDSI (through its President Kim Bangjun, Corporate Secretary/Chief Finance Officer Lorena De Dios, Vice President Lee Sangeok and Director Gil Hong Ok), anchored on the Secretary's Certificate submitted by Ms. De Dios to the SEC that "the Board of Directors and Stockholders of Global Daeil Subic Inc. allegedly held a meeting on January 15, 2013 to approve the increase of paid up capital and alleged waiver of pre-emptive rights of all existing subscribers" and that based on the "SEC Amended General Information Sheet and corporate filings of Global Daeil Subic Inc. the company authorized the subscription and issuance of Php15 Million worth of shares to AIS Korea and it received the said amount, representing increase of paid-up capital", in behalf of their clients "GLOBAL DAEL INC. (Korea) and Ms. Bae Myung Hee", pursuant to "Section 74 and 75 of the Corporation Code of the Philippines", Reyes Esguerra Baluyut Benitez & Bongco Law Offices (hereinafter referred to as petitioners' counsel) requested "to inspect, examine and to copy within five (5) days from receipt of this letter ALL business transactions, minutes of all stockholders and board meetings, proof of notice of these meetings, action taken therein, and the 'Stock and Transfer Book'". Also, it requested that it be provided "with ALL company bank statement of accounts, accounting, inventory and liquidation of company assets and liabilities and its financial statements within ten (10) days from receipt" of the letter.

On November 4, 2013, Bae Myung Hee as a "stockholder and director" filed her Complaint-Affidavit<sup>[13]</sup> with the Office of the City Prosecutor of Manila, docketed as NPS No. XV-07-INV-13K07318, charging Lorena De Dios, Kim Bang Jun, Gil Hong

Ok, Lee Sangeok, Park Sungkeon and Kim Ilma of falsification of public documents and perjury allegedly committed as follows:

"x x x

6. On or about 29 April 2013, respondents, conspiring with one another, cause the respondent Corporate Secretary Lorena De Dios to execute, and did execute, a Secretary's Certificate notarized before notary public Atty. Cesar G. Viola in the City of Manila, to the effect that the Global Daeil Subic Board of Directors and stockholders held a meeting on 15 January 2013 wherein the directors and stockholders purportedly 'approved the increase of its Paid-Up Capital stock by Fifteen Million Pesos (P15,000,000.00) divided into One Hundred Fifty Thousand (150,000) shares...' and that she certified 'that all non-subscribing stockholders have waive (sic) their pre-emptive rights to subscribe.'

7. Respondent Lorena De Dios, in her capacity also as Treasurer of Global Daeil Subic knowingly made these false notarized Secretary's Certificate, notarized List of Stockholders of Record Before and After Additional Infusion of P15Million Capital and Acknowledgment Receipt, which were required by law to be submitted to the SEC, representing subscription of 150,000 share in the amount of P15Million by a certain AIS Korea making it the new majority stockholder and owner of Global Daeil Subic Inc.

In support thereof, on 30 April 2013, respondent Lorena De Dios likewise submitted the SEC Form 10.1 on Notice of/Application for Confirmation Exempt Transaction, which was signed by respondent Kim Bang Jun wherein they falsely indicated AIS Korea as 'Qualified Buyer' of the 150,000 share of Global Daeil Subic since there was no board meeting approving the additional issuance of unissued shares and stockholders meeting for the waiver of their pre-emptive rights.

Copies of the Secretary's Certificate, notarized List of Stockholders of Record Before and After Additional Infusion of Capital, Acknowledgment Receipt, Amended General Information Sheet submitted to the SEC on 2 May 2013, including other documents, and the SEC Form 10.1 on Notice of/Application for Confirmation Exempt Transaction are hereto attached and made integral parts hereof as ANNEXES 'D', 'E', 'F', 'G' and 'H'.

8. The truth of the matter is that there was no such board and/or stockholders meeting on said date and time that approved the increase in paid up capital because:

- a) Global Daeil Korea and I were not present and could not have voted to allow the entry of AIS Korea as majority stockholder;
- b) No notices were sent to the directors and stockholders, including me;
- c) Global Daeil Korea and I would have exercised our pre-emptive rights to the remaining unissued shares, being the majority stockholder and owner of Global Daeil Subic, Inc.; and
- d) There was no new actual infusion of additional P15Million capital coming from AIS Korea to Global

Daeil Subic, Inc. In fact, respondents up to this time and despite several demands from me and Global Daeil Korea could not produce any bank inward remittances from Korea and/or AIS Korea as proof that indeed the following are new capital infusion coming from AIS Korea, and not existing company funds that were merely withdrawn and re-deposited to Global Daeil Subic BDO Subic Account No. 005860262419:

<u>Date</u>	<u>Name</u>	<u>Paid-Up Amount</u>
01-20-13	AIS Korea	P7,000,000.00
02-11-13	AIS Korea	5,000,000.00
03-08-13	AIS Korea	3,000,000.00
	TOTAL	P15,000,000.00

9. Because of the untruthful statements in the narration of facts and willful and corrupt assertion of falsehood on material matters under oath in the notarized corporate Secretary's Certificate approving the increase of paid-up by P15Million, notarized List of Stockholders of Record Before and After Additional Infusion of P15Million Capital and Acknowledgment Receipt issued by respondent Lorena De Dios, in conspiracy and with the knowledge and consent of the other respondents knowing they (sic) contain falsehood under oath, and thereafter filed and used with the SEC, Global Daeil Korea and I were fraudulently divested of majority ownership and control of Global Daeil Subic, including the exercise of our pre-emptive rights and the misappropriation of our money and other contribution to Global Daeil Subic in the amount of no less than TEN MILLION PESOS (P10,000,000.00).

10. Under the foregoing facts and pieces of evidence, on behalf of Global Daeil Korea and for myself, I am executing this Complaint-Affidavit to attest to the truth of the foregoing statements and to accuse respondents Respondents (sic) LORENA DE DIOS, KIM BANG JUN, LEE SANGEOK, GIL HONG OK, PARK SUNGKEON and KIM ILMA with conspiring with each other in committing Falsification of Public Documents and Perjury as defined and penalized under Articles 172 and 183 of the Revised Penal Code, Syndicate (sic) Estafa under P.D. 1689 and/or for such other offenses as may be warranted by law under the premises.”<sup>[14]</sup>

In their Complaint<sup>[15]</sup> dated December 9, 2013, filed before the Bureau of Immigration, Hong Jongwook and Bae Myung Hee prayed for the blacklisting and/or deportation of Kim Bang Jun, Lee Sangeok, Gil Hong Ok, Park Sungkeon, Kim Ilma and Yoon Suktae for being undersirable aliens. Based on their inquiry, “there was no new actual infusion of additional P15 Million capital coming from AIS Korea to Global Daeil Subic Inc. and because BDO bank deposit slips that were submitted to the SEC are fake.”

In another Complaint-Affidavit<sup>[16]</sup> dated November 4, 2013, filed before the Office of the City Prosecutor of Olongapo City, docketed as NPS No. III-10-INV-13-K-01101, Bae Myung Hee charged Lorena De Dios, Kim Bang Jun, Gil Hong Ok, Lee Sangeok, Park Sungkeon, Kim Ilma and Yoon Suktae of violating Sections 74 and 75, in relation to Section 144, of the Corporation Code of the Philippines for their willful refusal to allow her and Global Daeil Korea to "examine, inspect and copy ALL business transactions, minutes of all stockholders and board meetings xxx" as well as the "Stock and Transfer Book and financial statements of Global Daeil Subic."

In Bae Myung Hee's letter<sup>[17]</sup> dated November 4, 2013, addressed to the Corporate Secretary Lorena De Dios pursuant to the written request of the stockholders representing the majority of the outstanding capital stock, she informed the latter of a "Special Stockholders Meeting of GLOBAL DAEIL SUBIC INC. at its principal office on 19 November 2013 at 10:00 a.m." In another letter<sup>[18]</sup> dated November 15, 2013, addressed to the Corporate Secretary Lorena De Dios, Bae Myung Hee informed the latter of the resetting of the Special Stockholders Meeting to "6 December 2013 at 10:00 a.m." As appearing in the aforesaid letters, by registered mail, she furnished Kim Bang Jun, Gil Hong Ok, Park Sungkeon and Lee Sangeok with copies of both letters. Listed as the agenda in the meeting are the following: 1) Presentation of the Corporate books and records by the Corporate Secretary; 2) Report of Accounting and Financial statements, including balance sheet and bank statements of account by the Treasurer/Chief Finance Officer; 3) Election of members of the Board of Directors and/or Corporate Officers; 4) Amendment of Articles of Incorporation and/or By-Laws; and 5) Other matters.<sup>[19]</sup>

In the GIS submitted to the SEC on December 6, 2013, the following were listed as the Officers of GDSI, namely: 1) Hong Jongwook, Chairman; 2) Bae Myung Hee, President; 3) Hong Sangwook, Vice-President; and 4) Mary Ann Mendoza, Corporate Secretary/Treasurer.<sup>[20]</sup> Also, in the same GIS filed with the SEC, it appeared that GDSI's subscription remains the same, but the shares subscribed by each incorporators (Kim Bangjun, Gil Hong Ok, Park Sungkeun and Lee Sangeok), except Bae Myung Hee which was reduced to 496 shares, were reverted back to 500 shares each.<sup>[21]</sup> Moreover, listed as new stockholders were Hong Jookwook, Park Seung Ha, Hong Sangwook and Lee Eunsuk who subscribed one share each and paid the sum of Php100.00 each. Notably, AIS KOREA INC. was deleted as a stockholder of GDSI.<sup>[22]</sup>

In a letter<sup>[23]</sup> dated December 6, 2013, addressed to Chairman Roberto V. Garcia, in behalf of their clients "GLOBAL DAEIL SUBIC, INC., owner of American International School of Subic, and its President Ms. Bae Myung Hee", petitioners' counsel informed the former that "on 6 December 2013, the Board of Directors has removed for cause Mr. Kim Bangjun, Lee Sangeok (alias James Lee), Lorena de Dios as President, Vice-President and Corporate Secretary/Treasurer, respectively, for their series of acts of dishonesty, falsification of corporate books and financial statements, fraud, acts of mismanagement and other acts inimical to the interest of the Corporation that led to the filing of the following four (4) criminal complaint-affidavits for Falsification of Public Documents, Perjury and Violation of the Corporation Code with the Office of the City Prosecutor of Manila and Olongapo City."

In a letter<sup>[24]</sup> dated December 9, 2013, addressed to the BDO Main Office, through the Branch Manager BDO Subic-Times Square Branch, in behalf of their client