

SECOND DIVISION

[G.R. No. 175263, March 14, 2012]

MANUEL H. NIETO, JR., PETITIONER, VS. SECURITIES AND EXCHANGE COMMISSION (SEC), ATTY. VERNETTE G. UMALI-PACO IN HER CAPACITY AS GENERAL COUNSEL OF THE SEC AND IN HER PERSONAL CAPACITY, AND JOHN/JANE DOES, RESPONDENTS.

RESOLUTION

PEREZ, J.:

This petition for review on *certiorari* seeks the reversal of the Decision^[1] dated 30 October 2006 of the Court of Appeals in CA-G.R. SP. No. 94038, which annulled the Orders of the Securities and Exchange Commission (SEC) directing Philcomsat Holdings Corporation (PHC) to convene its annual stockholders' meeting.

The instant case is an offshoot of an intra-corporate dispute among contending groups, *i.e.*, Manuel H. Nieto, Jr. (Nieto) and Africa Groups (headed by Victor Africa), in PHC.

The factual antecedents are as follow:

The voting shares of PHC were 80.5% owned by Philcomsat, which in turn, was wholly owned by the Philippine Overseas Telecommunications Corporation (POTC).

The PHC Board of Directors (Board) informed the SEC that they had decided not to convene the stockholders' meeting for 2005 pending results of the 2004 election, which was then the subject of various court litigations. Jose Ozamiz (Ozamiz), a minority stockholder of PHC, wrote to SEC and requested the issuance of a cease and desist order from SEC against the group of Nieto, consisting of directors and officers of PHC, in order to prevent the latter from allegedly dissipating the corporate assets; and that a stockholders' meeting be convened.

In response to Ozamiz's letter, Nieto alleged that Ozamiz was attempting to preempt any judgment in cases pending before the various courts involving the stockholders of Philcomsat, POTC and PHC.

Another letter was filed by Ozamiz to SEC urging the latter to order PHC to hold a stockholders' meeting to elect a new set of directors and officers and to form the NOMELEC (A Nomination's Committee).

On 26 February 2006, the SEC promulgated an Order in SEC Case No. 02-06-113, thus:

IN VIEW OF THE FOREGOING, the Commission hereby resolves to:

1. Direct the directors and responsible officers of PHC and the concerned parties to submit to the Commission, within ten (10) days from receipt of this Order, the names of their nominees to the NOMELEC to be composed of five (5) members, namely:

- a) One (1) from the Africa group;
- b) One (1) from Nieto group;
- c) A representative from the minority group, Mr. Jose Ozamiz, who petitioned the calling of the annual stockholders' meeting of PHC;
- d) A representative of the Republic of the Philippines; and
- e) A common neutral party to be chosen by the other (4) members of the NOMELEC.

2. Direct the directors and responsible officers of PHC, within the same period to submit the preferred date of annual meeting of PHC which should be held not later than 17 April 2006; and

3. Direct the directors and responsible officers of PHC to comply with all the requirements for the conduct of meetings for publicly listed companies including the posting of notices for two (2) consecutive weeks prior to the date of meeting in strategic places within the premises of PHC.

SEC issued another Order on 5 April 2006 reiterating the demand that PHC convene its annual stockholders' meeting. The third Order issued on even date denied Nieto's motion for reconsideration of the 26 February 2006 Order.

On 11 April 2006, Nieto filed a petition for *certiorari* and prohibition to enjoin the SEC from calling the PHC's annual stockholder's meeting.

During the pendency of the petition before the Court of Appeals or on 1 July 2006, the majority stockholders of PHC entered into a Memorandum of Understanding (MOU) agreeing to unite and form a common slate for the Board in POTC, Philcomsat and PHC. They requested the SEC to set a date for the annual stockholders' meeting. The group of Nieto was a party to the MOU.

Four (4) days after the execution of the MOU, the Court of Appeals issued a Temporary Restraining Order (TRO) enjoining SEC from implementing its orders.

On 7 August 2006, the SEC filed its Comment to the petition and defended the order calling of the stockholders' meeting of PHC as within its power and jurisdiction to issue.

On 1 September 2006, petitioner filed a Motion to Withdraw Petition in view of the MOU. This action notwithstanding, the Court of Appeals proceeded to render a Decision annulling the assailed orders of the SEC and directing it to cease exercising its regulatory powers. In other words, the Court of Appeals granted Nieto's petition, *viz*: