

## SECOND DIVISION

[ G.R. No. 183905, April 16, 2009 ]

**GOVERNMENT SERVICE, INSURANCE SYSTEM, PETITIONER, VS. THE HON. COURT OF APPEALS, (8TH DIVISION), ANTHONY V. ROSETE, MANUEL M. LOPEZ, FELIPE B. ALFONSO, JESUS F. FRANCISCO, CHRISTIAN S. MONSOD, ELPIDIO L. IBAÑEZ, AND FRANCIS GILES PUNO, RESPONDENTS.**

[G.R. NO. 184275]

**SECURITIES AND EXCHANGE COMMISSION, COMMISSIONER JESUS ENRIQUE G. MARTINEZ IN HIS CAPACITY AS OFFICER-IN-CHARGE OF THE SECURITIES AND EXCHANGE COMMISSION AND HUBERT G. GUEVARA IN HIS CAPACITY AS DIRECTOR OF THE COMPLIANCE AND ENFORCEMENT DEPT. OF SECURITIES PETITIONERS, VS. ANTHONY V. ROSETE, MANUEL M. LOPEZ, FELIPE B. ALFONSO, JESUS F. FRANCISCO, CHRISTIAN S. MONSOD, ELPIDIO L. IBAÑEZ, AND FRANCIS GILES PUNO, RESPONDENTS.**

### D E C I S I O N

**TINGA, J.:**

These are the undisputed facts.

The annual stockholders' meeting (annual meeting) of the Manila Electric Company (Meralco) was scheduled on 27 May 2008.<sup>[1]</sup> In connection with the annual meeting, proxies<sup>[2]</sup> were required to be submitted on or before 17 May 2008, and the proxy validation was slated for five days later, or 22 May.<sup>[3]</sup>

In view of the resignation of Camilo Quiason,<sup>[4]</sup> the position of corporate secretary of Meralco became vacant.<sup>[5]</sup> On 15 May 2008, the board of directors of Meralco designated Jose Vitug<sup>[6]</sup> to act as corporate secretary for the annual meeting.<sup>[7]</sup> However, when the proxy validation began on 22 May, the proceedings were presided over by respondent Anthony Rosete (Rosete), assistant corporate secretary and in-house chief legal counsel of Meralco.<sup>[8]</sup> Private respondents nonetheless argue that Rosete was the acting corporate secretary of Meralco.<sup>[9]</sup> Petitioner Government Service Insurance System (GSIS), a major shareholder in Meralco, was distressed over the proxy validation proceedings, and the resulting certification of proxies in favor of the Meralco management.<sup>[10]</sup>

On 23 May 2008, GSIS filed a complaint with the Regional Trial Court (RTC) of Pasay City, docketed as R-PSY-08-05777-C4 seeking the declaration of certain proxies as

invalid.<sup>[11]</sup> Three days later, on 26 May, GSIS filed a *Notice* with the RTC manifesting the dismissal of the complaint.<sup>[12]</sup> On the same day, GSIS filed an *Urgent Petition*<sup>[13]</sup> with the Securities and Exchange Commission (SEC) seeking to restrain Rosete from "recognizing, counting and tabulating, directly or indirectly, notionally or actually or in whatever way, form, manner or means, or otherwise honoring the shares covered by" the proxies in favor of respondents Manuel Lopez,<sup>[14]</sup> Felipe Alfonso,<sup>[15]</sup> Jesus Francisco,<sup>[16]</sup> Oscar Lopez, Christian Monsod,<sup>[17]</sup> Elpidio Ibañez,<sup>[18]</sup> Francisco Giles-Puno<sup>[19]</sup> "or any officer representing MERALCO Management," and to annul and declare invalid said proxies.<sup>[20]</sup> GSIS also prayed for the issuance of a *Cease and Desist Order (CDO)* to restrain the use of said proxies during the annual meeting scheduled for the following day.<sup>[21]</sup> A *CDO*<sup>[22]</sup> to that effect signed by SEC Commissioner Jesus Martinez was issued on 26 May 2008, the same day the complaint was filed. During the annual meeting held on the following day, Rosete announced that the meeting would push through, expressing the opinion that the *CDO* is null and void.<sup>[23]</sup>

On 28 May 2008, the SEC issued a *Show Cause Order (SCO)*<sup>[24]</sup> against private respondents, ordering them to appear before the Commission on 30 May 2008 and explain why they should not be cited in contempt. On 29 May 2008, respondents filed a petition for certiorari with prohibition<sup>[25]</sup> with the Court of Appeals, praying that the *CDO* and the *SCO* be annulled. The petition was docketed as CA-G.R. SP No. 103692.

Many developments involving the Court of Appeals' handling of CA-G.R. SP No. 103692 and the conduct of several of its individual justices are recounted in our Resolution dated 9 September 2008 in A.M. No. 08-8-11-CA (*Re: Letter Of Presiding Justice Conrado M. Vasquez, Jr. On CA-G.R. SP No. 103692*).<sup>[26]</sup> On 23 July 2008, the Court of Appeals Eighth Division promulgated a decision in the case with the following dispositive portion:

**WHEREFORE,** premises considered, the May 26, 2008 complaint filed by GSIS in the SEC is hereby DISMISSED due to SEC's lack of jurisdiction, due to forum shopping by respondent GSIS, and due to splitting of causes of action by respondent GSIS. Consequently, the SEC's undated cease and desist order and the SEC's May 28, 2008 show cause order are hereby DECLARED VOID AB INITIO and without legal effect and their implementation are hereby permanently restrained.

The May 26, 2008 complaint filed by GSIS in the SEC is hereby barred from being considered, out of equitable considerations, as an election contest in the RTC, because the prescriptive period of 15 days from the May 27, 2008 Meralco election to file an election contest in the RTC had already run its course, pursuant to Sec. 3, Rule 6 of the interim Rules of Procedure Governing Intra-Corporate Controversies under R.A. No. 8799, due to deliberate act of GSIS in filing a complaint in the SEC instead of the RTC.

Let seventeen (17) copies of this decision be officially TRANSMITTED to the Office of the Chief Justice and three (3) copies to the Office of the

Court Administrator:

(1) for sanction by the Supreme Court against the "GSIS LAW OFFICE" for unauthorized practice of law,

(2) for sanction and discipline by the Supreme Court of GSIS lawyers led by Atty. Estrella Elamparo-Tayag, Atty. Marcial C. Pimentel, Atty. Enrique L. Tandan III, and other GSIS lawyers for violation of Sec. 27 of Rule 138 of the Revised Rules of Court, pursuant to *Santayana v. Alampay*, A.C. No. 5878, March 21, 2005 454 SCRA 1, and pursuant to *Land Bank of the Philippines v. Raymunda Martinez*, G.R. No. 169008, August 14, 2007:

(a) for violating express provisions of law and defying public policy in deliberately displacing the Office of the Government Corporate Counsel (OGCC) from its duty as the exclusive lawyer of GSIS, a government owned and controlled corporation (GOCC), by admittedly filing and defending cases as well as appearing as counsel for GSIS, without authority to do so, the authority belonging exclusively to the OGCC;

(b) for violating the lawyer's oath for failing in their duty to act as faithful officers of the court by engaging in forum shopping;

(c) for violating express provisions of law most especially those on jurisdiction which are mandatory; and

(d) for violating Sec. 3, Rule 2 of the 1997 Rules of Civil Procedure by deliberately splitting causes of action in order to file multiple complaints: (i) in the RTC of Pasay City and (ii) in the SEC, in order to ensure a favorable order.<sup>[27]</sup>

The promulgation of the said decision provoked a searing controversy, as detailed in our Resolution in A.M. No. 08-8-11-CA. Nonetheless, the appellate court's decision spawned three different actions docketed with their own case numbers before this Court. One of them, G.R. No. 183933, was initiated by a *Motion for Extension of Time to File Petition for Review* filed by the Office of the Solicitor General (OSG) in behalf of the SEC, Commissioner Martinez in his capacity as officer-in-charge of the SEC, and Hubert Guevarra in his capacity as Director of the Compliance and Enforcement Department of the SEC.<sup>[28]</sup> However, the OSG did not follow through with the filing of the petition for review adverted to; thus, on 19 January 2009, the Court resolved to declare G.R. No. 183933 closed and terminated.<sup>[29]</sup>

The two remaining cases before us are docketed as G.R. No. 183905 and 184275. G.R. No. 183905 pertains to a petition for certiorari and prohibition filed by GSIS, against the Court of Appeals, and respondents Rosete, Lopez, Alfonso, Francisco, Monsod, Ibañez and Puno, all of whom serve in different corporate capacities with Meralco or First Philippines Holdings Corporation, a major stockholder of Meralco and an affiliate of the Lopez Group of Companies. This petition seeks of the Court to declare the 23 July 2008 decision of the Court of Appeals null and void, affirm the

SEC's jurisdiction over the petition filed before it by GSIS, and pronounce that the *CDO* and the *SCO* orders are valid. This petition was filed in behalf of GSIS by the "GSIS Law Office;" it was signed by the Chief Legal Counsel and Assistant Legal Counsel of GSIS, and three self-identified "Attorney[s]," presumably holding lawyer positions in GSIS.<sup>[30]</sup>

The OSG also filed the other petition, docketed as G.R. No. 184275. It identifies as its petitioners the SEC, Commissioner Martinez in his capacity as OIC of the SEC, and Hubert Guevarra in his capacity as Director of the Compliance and Enforcement Department of the SEC - the same petitioners in the aborted petition for review initially docketed as G.R. No. 183933. Unlike what was adverted to in the motion for extension filed by the same petitioners in G.R. No. 183933, the petition in G.R. No. 184275 is one for certiorari under Rule 65 as indicated on page 3 thereof,<sup>[31]</sup> and not a petition for review. Interestingly, save for the first page which leaves the docket number blank, all 86 pages of this petition for certiorari carry a header wrongly identifying the pleading as the non-existent petition for review under G.R. No. 183933. This petition seeks the "reversal" of the assailed decision of the Court of Appeals, the recognition of the jurisdiction of the SEC over the petition of GSIS, and the affirmation of the *CDO* and *SCO*.

## II.

Private respondents seek the expunction of the petition filed by the SEC in G.R. No. 184275. We agree that the petitioners therein, namely: the SEC, Commissioner Marquez and Guevarra, are not real parties-in-interest to the dispute and thus bereft of capacity to file the petition. By way of simple illustration, to argue otherwise is to say that the trial court judge, the National Labor Relations Commission, or any quasi-judicial agency has the right to seek the review of an appellate court decision reversing any of their rulings. That prospect, as any serious student of remedial law knows, is zero.

The Court, through the Resolution of the Third Division dated 2 September 2008, had resolved to treat the petition in G.R. No. 184275 as a petition for review on certiorari, but withheld giving due course to it.<sup>[32]</sup> Under Section 1 of Rule 45, which governs appeals by certiorari, the right to file the appeal is restricted to "a party," meaning that only the real parties-in-interest who litigated the petition for certiorari before the Court of Appeals are entitled to appeal the same under Rule 45. The SEC and its two officers may have been designated as respondents in the petition for certiorari filed with the Court of Appeals, but under Section 5 of Rule 65 they are not entitled to be classified as real parties-in-interest. Under the provision, the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person to whom grave abuse of discretion is imputed (the SEC and its two officers in this case) are denominated only as public respondents. The provision further states that "public respondents shall not appear in or file an answer or comment to the petition or any pleading therein."<sup>[33]</sup> Justice Regalado explains:

[R]ule 65 involves an original special civil action specifically directed against the person, court, agency or party *a quo* which had committed not only a mistake of judgment but an error of jurisdiction, hence should be made public respondents in that action brought to nullify their invalid acts. It shall, however be the duty of the party litigant, whether in an

appeal under Rule 45 or in a special civil action in Rule 65, to defend in his behalf and the party whose adjudication is assailed, as he is the one interested in sustaining the correctness of the disposition or the validity of the proceedings.

xxx The party interested in sustaining the proceedings in the lower court must be joined as a co-respondent and he has the duty to defend in his own behalf and in behalf of the court which rendered the questioned order. While there is nothing in the Rules that prohibit the presiding judge of the court involved from filing his own answer and defending his questioned order, **the Supreme Court has reminded judges of the lower courts to refrain from doing so unless ordered by the Supreme Court.**[ 34] **The judicial norm or mode of conduct to be observed in trial and appellate courts is now prescribed in the second paragraph of this section.**

xxx

**A person not a party to the proceedings in the trial court or in the Court of Appeals cannot maintain an action for certiorari in the Supreme Court to have the judgment reviewed.** [35]

Rule 65 does recognize that the SEC and its officers should have been designated as public respondents in the petition for certiorari filed with the Court of Appeals. Yet their involvement in the instant petition is not as original party-litigants, but as the quasi-judicial agency and officers exercising the adjudicative functions over the dispute between the two contending factions within Meralco. From the onset, neither the SEC nor Martinez or Guevarra has been considered as a real party-in-interest. Section 2, Rule 3 of the 1997 Rules of Civil Procedure provides that every action must be prosecuted or defended in the name of the real party in interest, that 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." It would be facetious to assume that the SEC had any real interest or stake in the intra-corporate dispute within Meralco.

We find our ruling in *Hon. Santiago v. Court of Appeals*[36] quite apposite to the question at hand. Petitioner therein, a trial court judge, had presided over an expropriation case. The litigants had arrived at an amicable settlement, but the judge refused to approve the same, even declaring it invalid. The matter was elevated to the Court of Appeals, which promptly reversed the trial court and approved the amicable settlement. The judge took the extraordinary step of filing in his own behalf a petition for review on certiorari with this Court, assailing the decision of the Court of Appeals which had reversed him. In disallowing the judge's petition, the Court explained:

While the issue in the Court of Appeals and that raised by petitioner now is whether the latter abused his discretion in nullifying the deeds of sale and in proceeding with the expropriation proceeding, that question is eclipsed by the concern of whether Judge Pedro T. Santiago may file this petition at all.

**And the answer must be in the negative, Section 1 of Rule 45 allows a party to appeal by certiorari from a judgment of the Court**