

EN BANC

[**A.M. OCA I.P.I. No. 07-108-CA-J, June 12, 2008**]

ERLINDA BILDNER, COMPLAINANT, VS. JUSTICE VICENTE Q. ROXAS, RESPONDENT.

R E S O L U T I O N

VELASCO JR., J.:

This administrative complaint filed on June 6, 2007 by Erlinda Bildner, president of the Philippine Communications Satellite Corporation (PHILCOMSAT), against Court of Appeals (CA) Justice Vicente Q. Roxas charges Justice Roxas with gross ignorance of the law in deciding CA-G.R. SP No. 94038 entitled *Manuel H. Nieto, Jr. v. Securities and Exchange Commission (Nieto)* when he granted the petition despite the Motion to Withdraw Petition based on a Memorandum of Understanding (MOU) among the opposing factions of stockholders of the Philippine Holdings Corporation (PHC). Bildner also alleges that Justice Roxas was guilty of obvious impartiality when he disregarded her motion for a hearing to determine the authority of the counsel representing Manuel Nieto, Jr., the hold-over president of PHC. Eighty-one percent (81%) of PHC is owned by PHILCOMSAT, which complainant Bildner heads. It is fully owned by the Philippine Overseas Telecommunications Corporation.

The problem started in August 2004. After having no annual elections from 2000 to 2003, the stockholders of PHC held their annual elections upon request of a minority stockholder, one Jose Ma. Ozamis. But since the elections were under protest, the same group of directors/officers headed by Nieto kept their positions on a hold-over capacity. On May 16, 2005, Ozamis requested the Securities and Exchange Commission (SEC) to call an annual stockholders' meeting that the SEC granted in an order on February 26, 2006. Nieto sought reconsideration of the order averring that PHC had pending cases that had yet to be resolved before the SEC could call the meeting.

Bildner and her group resisted the objection of Nieto to holding a meeting, alleging that the cases alluded to by Nieto had long been in existence even before the August 2004 meeting of PHC. The SEC denied the motion for reconsideration of Nieto. It said that those cases had nothing to do with the petition calling for a stockholders' meeting and their pendency was no reason not to hold the annual meeting.

Hence, on April 11, 2006, Nieto filed before the CA a petition for certiorari and prohibition with prayer for a temporary restraining order (TRO) and a writ of preliminary injunction, docketed as CA-G.R. SP No. 94038. Nieto alleged that the SEC committed grave abuse of discretion when it issued the orders dated February 26, 2006 and April 4, 2006 in SEC Case No. 02-06-0133 that involved intra-corporate matters, matters that are outside the jurisdiction of the SEC.

Bildner filed an opposition to the application for a TRO, asserting that the SEC had jurisdiction to compel the officers of any registered corporation or association to call a stockholders' meeting.

Meanwhile, on July 1, 2006, the majority stockholders of PHC, including Bildner, entered into an MOU and requested the SEC to set a date for the annual stockholders meeting.

Four days after the execution of the MOU, on July 5, 2006, the CA, with Justice Roxas as *ponente*, issued a TRO enjoining the respondents in CA-G.R. SP No. 94038 from implementing the assailed orders in SEC Case No. 02-06-0133.

On July 26, 2006, in her Comment with Motion to Lift TRO and Motion to Set Case for Hearing of CA-G.R. SP No. 94038, Bildner insisted that the SEC had the jurisdiction to call an annual stockholders meeting. Anent the Motion to Set Case for Hearing, she claimed that she had evidence to show that Nieto was misled by his counsels of record into signing the petition before the CA. She posited that had the CA not issued the TRO, the SEC could have resolved the stockholders' dilemma.

The SEC in its Comment maintained that CA-G.R. SP No. 94038 had become mooted by the MOU. It likewise asserted that it had jurisdiction to call the PHC elections.

Despite the MOU, on August 16, 2006, the CA issued a Resolution issuing a writ of preliminary injunction.

Thereafter, on September 1, 2006, Nieto filed a Motion to Withdraw Petition that the CA, with Justice Roxas as *ponente*, denied. The CA said the motion came too late inasmuch as the SEC Comment had already been filed. According to the CA, under Section 8, Rule 65 of the Rules of Civil Procedure, the CA was confined only to two options: to either grant or dismiss the petition. The CA Decision held that the assailed SEC orders were issued with grave abuse of discretion as they effectively rendered moot any decision that the regular courts may make on the disputed elections. The dispositive portion of the CA's October 30, 2006 Decision^[1] states:

WHEREFORE, premises considered, petition is hereby GRANTED. The February 26, 2006 and the two (2) April 4, 2006 Orders of the SEC in SEC Case No. 02-06-133 are hereby ANNULLED. The Securities and Exchange Commission is hereby DIRECTED to stay its hand and cease in the exercise of its regulatory powers, as in this case, when they interfere with or render moot the exercise of the adjudicative powers already transferred from the SEC to the regular courts.

SO ORDERED.

Hence, we have this administrative complaint charging Justice Roxas with gross ignorance of the law and obvious impartiality.

The complaint has no merit. Essentially, complainant raises two grounds: *First*, Justice Roxas should not have granted Nieto's petition before the CA because it had been superseded by Nieto's Motion to Withdraw Petition. *Second*, Justice Roxas should have acted on complainant's motion to set a hearing to determine the authority of Nieto's former counsels to represent him.