

THIRD DIVISION

[G.R. NO. 166984, August 07, 2007]

MANUEL H. NIETO, JR., PETITIONER, VS. HON. COURT OF APPEALS (FORMER SPECIAL SEVENTEENTH DIVISION), VICTOR AFRICA AND JOHN/JANE DOES, STYLING THEMSELVES AS THE BOARD OF DIRECTORS/OFFICERS OF PHILIPPINE OVERSEAS TELECOMMUNICATIONS CORPORATION (POTC) AND PHILIPPINE COMMUNICATIONS SATELLITE CORPORATION, RESPONDENTS.

RESOLUTION

CHICO-NAZARIO, J.:

This Court is presently faced with a unique circumstance wherein the opposing parties - petitioner Manuel H. Nieto, Jr. (Nieto) and private respondent Victor A. Africa (Africa) - now find themselves on the same side. Nieto, with the concurrence of Africa, is now seeking the withdrawal of the Petition at bar to give way to the amicable settlement of the issues between them and their camps. Opposition to the withdrawal of the Petition, however, unexpectedly came from another person, Atty. Alma Kristina O. Alobba (Atty. Alobba), Nieto's former counsel, who moved to intervene herein by filing her own Petition-in-Intervention.

The present Petition is just one of the numerous disputes arising from the fiercely contested control of three corporations - Philippine Overseas Telecommunications Corporation (POTC), Philippines Communications Satellite Corporation (PHILCOMSAT), and Philcomsat Holdings Corporation (PHC). All three corporations are related since POTC wholly owns PHILCOMSAT, and PHILCOMSAT owns 80% of PHC.

Sometime in 2003, an unnamed stockholder of PHC filed a complaint with the Securities and Exchange Commission (SEC) alleging that PHC had not conducted its annual stockholders' meeting and was thus unable to elect members of its Board of Directors for the years 2001 to 2003. In the meantime, members of the previous Board of Directors continued to serve as such all these years in their holdover capacity. The complaint was docketed as SEC Case No. 12-03-03.

The SEC then held a conference and conducted hearings among the parties concerned. Apparently, the SEC gave credence to the assertions of PHC Directors Philip Brodett (who was also PHC Vice President) and Enrique Locsin (Government Nominee in PHC) in their letter, dated 8 January 2004, that -

1. x x x PHC's inability to hold its annual stockholders' meeting in the past years can be attributed to the following: previous attempt of the group of Mesdames Cristina Ilusorio and Sylvia Ilusorio and Mr. Carmelo Africa (for brevity the "Ilusorio Group") to control PHC without legal basis; delay in completion of PHC's audited financial

statements for the years 2001, 2002, and 2003 was caused by the Ilusorio Group and the pending dispute as to who between the Ilusorio Group, on one hand, and the group of Ambassador Manuel Nieto, Jr./Philippine Government, on the other, properly constitutes the governing board of directors and officers of the parent companies of PHC, namely Philcomsat and POTC.

Considering the aforesaid pending dispute as to who really controls the mother companies of PHC, it would be advisable and practicable that the annual meetings of the stockholders and the election of directors and officers of Philcomsat and POTC should precede those of PHC. In view thereof, and for practical reasons and good order's sake, it was suggested that perhaps the Commission should direct the holding of the annual stockholders' meetings and election of directors and officers of both Philcomsat and POTC at a date prior or dates prior to those of PHC.^[1]

In sum, PHC cannot hold its annual stockholders' meeting because its mother companies, PHILCOMSAT and POTC, were also unable to hold their respective annual stockholders' meeting and election of members of the Board of Directors pending resolution of the controversy as to who are the legitimate stockholders of said companies. To address the problem at PHC, the SEC, through its General Counsel, Atty. Vernetta G. Umali-Paco (Atty. Umali-Paco), issued an Order, dated 8 July 2004, with the following directive:

1. POTC and Philcomsat, their respective board of directors or their duly authorized representatives are hereby directed to constitute, within ten (10) days from date of actual receipt hereof, their COMELEC to be composed of the PCGG nominee/director to act as the neutral party, a representative from the Africa Group and one representative from the Nieto Group to perform any and all acts necessary for the determination of the legitimate stockholders' (sic) of the corporation qualified to vote or be represented in the corporate meetings and ensure a clean, orderly, and credible election of POTC and Philcomsat.
2. POTC is likewise directed to conduct its annual stockholders' meeting not later than 5 August 2004 while Philcomsat shall hold its annual stockholders' meeting on or before 12 August 2004. Thereafter, PHC shall call its annual stockholders' meeting not later than August 31, 2004.
3. PHC, on the other hand, its board of directors or duly authorized representatives are ordered to submit a revised calendar of activities for the forthcoming 31 August 2004 annual stockholders' meeting within five (5) days from actual receipt of this Order. The said date for the Annual Stockholders' Meeting shall not be postponed on a later date unless with the prior Order of the Commission. A Nomination's Committee (NOMELEC) shall be constituted pursuant to the corporation's Manual on Corporate Governance submitted to this Commission. This Committee shall be composed of three (3) voting members and one (1) non-voting

member in the person of the HR Director/Manager pursuant to the section 2.2.2.1 of the section 2.2.2.1 (sic) of the said Manual. One representative each from the Africa Group and the Nieto Group and a nominee/representative of the PCGG (to act as an independent member) shall comprise the three (3) voting members. The committee shall perform the functions outlined in Sections 2.2.2.1.1, 2.2.2.1.2, 2.2.2.1.3, and 2.2.2.1.4 of the Manual in connection with the forthcoming election. Failure to submit the names of the representative of each group within ten (10) days from receipt of this Order shall authorize the Commission to appoint persons to represent each group. Failure or refusal on the part of the corporation to hold the stockholders' meeting on the scheduled date shall authorize the petitioning shareholder to call and preside in the said meeting pursuant to Section 50 of the Corporation Code. All previous orders inconsistent herewith are hereby revoked.

4. Let the Corporate Finance Department (CFD) of this Commission be furnished with a copy of this Order for its appropriate action on the matter.

To ensure protection of the interest of all outstanding capital stocks, including minority shareholders, Attys. Nicanor P. Patricio Jr. and Myla Gloria A. Amboy are hereby designated as SEC representatives to attend and supervise the said Annual Stockholders' Meeting.^[2]

On 26 July 2004, the SEC, through its General Counsel, Atty. Umali-Paco, issued a Clarificatory Order, explicating thus:

First. The SEC Order of **8 July 2004** which states in part:

"POTC is likewise directed to conduct its annual stockholders' meeting not later than 5 August 2004 while Philcomsat shall hold its annual stockholders' meeting on or before 12 August 2004. Thereafter, PHC shall call its annual stockholders' meeting not later than August 31, 2004."

should be interpreted to mean that **the stockholders' meetings of POTC, Philcomsat and PHC shall be held successively, in the order mentioned, that is, POTC first, then Philcomsat, and lastly, PHC.** This was the intention of the Commission in issuing the said Order (8 July 2004).

To further clarify and ensure that the meetings shall be conducted on specific dates, the Order of July 8, 2004 is hereby modified and the dates of the meetings are hereby scheduled as follows:

- 1. For POTC - July 28, 2004**
- 2. For Philcomsat - August 12, 2004**
- 3. For PHC -August 31, 2004**

x x x x

Accordingly, POTC, Philcomsat and Philcomsat Holdings Corporation

(PHC) are hereby reminded to strictly adhere to the scheduled dates of meetings of the said corporations set forth in this Order. POTC, Philcomsat and PHC are further reminded to also comply with the manner of the conduct of their respective meetings as provided in the Order of the Commission dated July 8, 2004.^[3]

Providing an update on the actions taken by the parties pursuant to its foregoing orders, the SEC, through its General Counsel, Atty. Umali-Paco, issued a third Order, dated 20 August 2004, in which it noted that:

On separate dates, the group of Atty. Victor Africa ("Africa group") and the group of Ambassador Nieto ("Nieto group") conducted their respective annual stockholders' meetings. The Africa group held successive meetings for POTC and Philcomsat on July 28, 2004, while the Nieto group held similar meetings for POTC and Philcomsat on August 5 and August 9, respectively. On all these meetings, where the SEC representatives were present (except the Philcomsat meeting of the Africa group), the Commission noted the following observations:

	<u>Africa Group</u>	<u>Nieto Group</u>
1. POTC meeting	1. no COMELEC was constituted 2. no validation of proxies 3. the list of stockholders and the stock and transfer were not presented during the meeting 4. As per Atty. Africa, the Meeting was not called by the SEC but rather by the board of directors voluntarily	1. A COMELEC was constituted composed of Mr. Locsin and Atty. Lokin (and 3rd position supposedly for the representative of the Africa group was vacant because the group did not submit their nominee) 2. the proxies and the list of stockholders prepared by the Asst. Corp. Sec. were presented during the meeting. 3. the Presiding Officer declared that the meeting was called pursuant to the Order of the Commission.
2. Philcomsat	1. No SEC representative	1. A COMELEC was constituted composed of Mr. Locsin, and Atty. Lokin 2. the proxies and the list of stockholders prepared

by the Asst. Corp. Sec. were presented during the meeting.

3. the Presiding Officer declared that the meeting was called pursuant to the Order of the Commission

In light of the foregoing, the Commission hereby upholds the validity of the stockholders' meetings conducted by the Nieto Group in view of the clear compliance by the said group with the conditions set forth by the Commission in its Orders of July 8 and 26, 2004.

Meanwhile, the PHC meeting shall proceed as scheduled on August 31, 2004. The Officers and Directors of PHC are hereby reminded to strictly conform to the conditions stated in the July 8 and 26 Orders.

The President and the Corporate Secretary of PHC and its Stock and Transfer Agent are hereby ordered to submit to the Commission the certified list of stockholders and the stock and transfer book of PHC on or before August 25, 2004.

Due to the failure of the Africa group to nominate their representative to the PHC NOMELEC (sic), **Atty. Victoria De Los Reyes** is hereby designated as the representative of the Africa group in the forthcoming August 31, 2004 PHC meeting.

The Corporation Finance Department is hereby directed to monitor PHC's compliance with the laws, rules and regulations relative to the calling of the stockholders' meeting and to make the necessary action to ensure such compliance.

The Order of 8 July 2004 and 26 July 2004 insofar as not inconsistent with this Order shall remain in full force and effect. [4]

By virtue of the afore-quoted Order, the SEC validated the stockholders' meetings of POTC and PHILCOMSAT conducted by the Nieto group. Having already gained control of the mother companies POTC and PHILCOMSAT, the Nieto group would undoubtedly also dominate the subsequent stockholders' meeting and election for the new members of the Board of Directors of PHC.

Thereafter, Africa, in the names of POTC and PHILCOMSAT, and in his capacity as the alleged President of said corporations, filed with the Court of Appeals a Petition^[5] for *Certiorari* and Prohibition with prayer for the issuance of a temporary restraining order (TRO) and a writ of preliminary injunction against the SEC and Atty. Umali-Paco, the SEC General Counsel; and Nieto, Atty. Luis K. Lokin, Jr. (Lokin), and Atty. Alobba, purportedly misrepresenting themselves to be the Chairman of the Board of Directors, Corporate Secretary, and Assistant Corporate Secretary, respectively, of POTC and PHILCOMSAT. Africa's Petition was docketed as CA-G.R. SP No. 85959. Africa's prayer therein reads: