

REPUBLIC TELECOMMUNICATIONS HOLDINGS, INC. REPRESENTED BY A2 TELECOMMUNICATIONS INTERNATIONAL HOLDING CO. PTE. LTD., AND BEAUTY FORTUNE INVESTMENTS LTD., HON. ROSITA R. GUERRERO...*G.R. No. 135074. January 29, 1999*

Ponente: AUSTRIA-MARTINEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-135074/>**AUSTRIA-MARTINEZ, J.:**

Before this Court is a Petition for Certiorari and Prohibition with an Urgent Prayer for a Temporary Restraining Order and/or Writ of Preliminary Injunction to annul and set aside the Resolution dated August 27, 1998 of public respondent Court of Appeals in CA-G.R. No. 48456 entitled “Republic Telecommunications Holdings, Inc. et al. vs. Hon. Rosita R. Guerrero, et al.”

Petitioner Republic Telecommunications Holdings, Inc. (petitioner Retelcom) represented by A2 Telecommunications International Holding Co. Pte. Ltd. and Beauty Fortune Investments Ltd. filed a derivative suit on 5 March 1998 with the Securities, Investigation and Clearing Department of the Securities and Exchange Commission (SICD) docketed as SEC Case No. 03-98-5926 praying for the nullification of Board Resolution Nos. 98-13, 98-14, and 98-15 of the Retelcom Board with an urgent prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction. The SICD granted a temporary restraining order for 72 hours enjoining private respondents from executing or implementing the definitive agreements subject of the resolutions. The SICD later extended the temporary restraining order for 17 days. In an Order dated March 27, 1998, the SICD directed the issuance of a writ of preliminary injunction.

Private respondents Jose L. Santiago, Eleanor M. Santiago, Marilyn Santiago, Philippine Telegraph and Telephone Corporation and Philippine Wireless, Inc. filed petition for certiorari and private respondents Cesar U. Querubin, James B. Lindenberg, Hyun Shik Kim and Inho lee also filed a petition for certiorari before the Securities and Exchange Commission En Banc which were docketed as SEC EB Case Nos. 597 and 598, respectively. Both petitions which sought to dissolve the writ of preliminary injunction issued by the SICD and to dismiss the petition pending before the SICD were, however, dismissed by the Securities and Exchange Commission En Banc.

With the dismissal of their petitions, private respondents elevated the matter to the Court of Appeals via a common Petition for Review. Said petition before the Court of Appeals prayed that a temporary restraining order be issued to restrain the enforcement of the writ of preliminary injunction issued by the SICD; reverse and set aside the order of the Securities and Exchange Commission En Banc and declare as null and void the writ of preliminary injunction issued by the SICD; and to elevate the records of the Securities and Exchange Commission En Banc and the SICD cases.

On August 11, 1998, a hearing on the application for the Issuance of a temporary restraining order and/or writ of preliminary injunction was held. During this hearing, the Court of Appeals ruled that upon the parties’ submission

of their respective memoranda and petitioner Retelcom's comment, the case would be considered submitted for decision.[1] On August 27, 1998, public respondent Court of Appeals issued the assailed resolution.

On September 3, 1998, the instant petition was filed. In a Resolution dated September 9, 1998, the Court issued a temporary restraining order enjoining the Court of Appeals from enforcing its questioned Resolution dated August 27, 1998. Private respondents, as required by the Court filed their Comment. Petitioner, also as directed, filed their Reply.

Petitioner argues that the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the questioned resolution due to the following:

1)

The temporary restraining order is a patent nullity because (a) it was not established and the Court of Appeals did not find that great or irreparable injury would be suffered by the private respondents before the matter can be heard on notice; (b) the temporary restraining order issued by the Court of Appeals will alter and not preserve the status quo; (c) the judgment of the Court of Appeals will not be rendered ineffectual even if it does not issue a temporary restraining order; (d) the Court of Appeals did not find any private respondents have not alleged and shown any clear positive right that will justify the issuance of the temporary restraining order; and, (e) the issuance of the temporary restraining order itself violated the Court of Appeal's own ruling; and,

2)

The order of the Court of Appeals directing the Securities and Exchange Commission En Banc to elevate the records of SEC En Banc Nos. 597 and 598 and for the SICD to elevate the records of SEC Case No. 03-98-5926 is null and void.

Private respondents, on the other hand, argue that the Court of Appeals did not commit error nor acted with grave abuse of discretion in issuing the Resolution dated August 27, 1998 for it was issued in accordance with the Rules of Court and jurisprudence on the matter.

After considering the arguments presented by petitioners and private respondents, the Court resolves to grant the petition.

The temporary restraining order issued by the Court of Appeals has no basis.

The status quo usually preserved by a preliminary injunction is the last actual, peaceable and uncontested status which preceded the actual controversy.[2]

As correctly pointed out by petitioner, the finding of the Securities and Exchange Commission En Banc that "the issuance of the writ below has no other purpose than to preserve the status quo before the case was filed with the Securities, Investigation, and Clearing Department (SICD), that is, prior to the negotiations of Retelcom with Qualcomm and the corresponding agreements thereon being finalized,"[3] was never questioned by the private respondents in its petition for review filed with the Court of Appeals. It was for this reason that the SICD issued the temporary restraining order and later on, the writ of preliminary injunction. When the Court of Appeals issued the assailed resolution, private respondents are now at liberty to implement the board resolutions assailed in the SICD case and sign the questioned definitive agreements with Qualcomm, Inc. Thus, the status quo ante, instead of being preserved, will be disturbed.

Also, the private respondents failed to show a clear positive right that must be protected by a temporary restraining order. On the contrary, petitioner Retelcom has established its clear legal right justifying the issuance

by the SICD of the writ of preliminary injunction. Petitioner Retelcom has further shown that the implementation of the questioned board resolutions, if not enjoined, would work injustice and irreparable damage to it. We thus quote with approval the findings of the SEC En Banc, to wit:

“After a consideration of the matters presented during the hearing and the memoranda submitted by the parties, we find no grave abuse of discretion on the part of the Hearing Panel in issuing the Writ of Preliminary Injunction below, and consequently, hold that the Petitioners have not establish a right to its issuance by Us. The issuance of the writ below has no other purpose than to preserve the status quo before the case was filed with the Securities, Investigation, and Clearing Department (SICD), that is, prior to the negotiations of Retelcom with Qualcomm and the corresponding agreements thereon being finalized.

“It would be the best interest of all the parties if the writ issued below were to continue and the proposed agreements were held in abeyance until after the Hearing Panel has thoroughly scrutinized and gone over the same. To allow the Petitioners to implement the contracts sought to be nullified will render moot and academic any favorable judgment that Respondents will obtain in the case below. The Respondents have brought into fore the issue of the validity of these proposed agreements and the Commission is not in a position to rule on the same, as yet, since addressing them would serve as a judgment on the merits, which runs contrary to the essence of a preliminary injunction, (10 Fletcher 4852)

“The Commission concurs with the Hearing Panel that the allegations in the petition below and the evidence presented so far support prima facie the claim of Respondents herein that the contracts sought to be enjoined were negotiated in bad faith for the undue advantage of Petitioners herein. If, indeed, there was bad faith on the part of Petitioners, it is not disputed that Respondents are entitled to the relief prayed for and the exercise of business judgment by the Petitioners may be validly set aside in this proceeding. It is elementary in corporation law that the business judgment rule admits of exceptions; bad faith being one of them, gross negligence, another.

“Petitioners would want this Commission to set aside the preliminary injunction issued in the petition below by trying to convince Us that there was no bad faith on their part. This we cannot do in this Petition. In cases of preliminary injunction, the findings of fact to support its issuance need not be conclusive as that determination is the function of the trial on the main case. Hence, whether or not there was indeed bad faith on the part of Petitioners should be established in the trial below.

“Moreover, the issuance of the writ is an ancillary or preventive remedy to secure the rights of a party to a pending case is entirely within the discretion of the court taking cognizance of the case. The only limitation upon this discretionary power is that it should be exercised upon the grounds and in the manner provided for by law.

“The Petitioners have been alleging that the Hearing panel acted with ‘grave abuse of discretion’ in issuing the subject writ. However, a scrutiny of the said Order dated 27 March 1998 and the proceedings conducted prior to its issuance reveal otherwise. The Petitioners have made use of this legal term thoughtlessly.

“‘Grave abuse of discretion’ has been defined as such capricious and whimsical exercise of judgement as is equivalent to lack of jurisdiction. The Supreme Court went further in stating that ‘abuse of discretion alone is not sufficient, and to warrant the issuance of the writ on that ground, the abuse of discretion must be grave, as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. (67 Phil. 340, Tavera-Luna, Inc. v. Nable)

“No grave abuse of discretion can be imputed upon the Hearing Panel in issuing the Writ of Preliminary Injunction in favor of the Respondents. They have conducted hearings on its application and have considered and taken into account the evidence presented by both sides. The most that could be ascribed to the Hearing Panel, if any, is an error in the appreciation of evidence, which, however, is not such jurisdictional matter that

may be determined in a certiorari proceeding. Nonetheless, We find that the issuance of the injunctive writ below is supported by sufficient, credible and persuasive evidence.”[4]

The assailed resolution of the Court of Appeals being baseless and having found the resolution of the Securities and Exchange Commission En Banc dated July 7, 1998 to be valid, the petition before the Court of Appeals is rendered moot. The proceedings before the SICD should, therefore, continue and be resolved with dispatch.

WHEREFORE, in view of the foregoing, the petition is GRANTED. The Resolution dated August 27, 1998 of the Court of Appeals is hereby SET ASIDE. The SICD is directed to resolve with dispatch SEC Case No. 03-98-5926.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Melo, Kapunan, and Pardo, JJ., concur.

[1] TSN dated 11 August 1998, pp. 63-64 in CA-G.R. No. 48456; Annex II, pp.

[2] *Rosete v. Court of Appeals*, 264 SCRA 147 [1996].

[3] *Rollo*, p. 313.

[4] Securities and Exchange Commission En Banc Decision dated July 7, 1998; *Rollo*, pp. 313-315.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.