REPUBLIC TELECOMMUNICATIONS HOLDINGS, INC., REPRESENTED BY A2 TELECOMMUNICATIONS INTER-NATIONAL HOLDING CO. PTE. LTD., AND BEAUTY FORTUNE INVESTMENTS, LTD., HON. ROSITA R. GUERR...

G.R. NO. 140338. August 07, 2007

Ponente: TINGA, J.

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TINGA, J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, assailing the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. SP No. 48456. The questioned Decision granted respondents' petition for certiorari and nullified the writ of preliminary injunction and various orders issued by the Securities and Exchange Commission (SEC) while the Resolution denied petitioners' motion for reconsideration.

The instant petition originated from a derivative suit filed by petitioners A2 Telecommunications International Holding Co. Pte. Ltd. (A2 Telecom) and Beauty Fortune Investments Ltd. (hereinafter referred to as petitioners)[3] with the Securities Investigation and Clearing Department (SICD) of the SEC.

A2 Telecom owns 20% of the total stock issued and outstanding of Republic Telecommunications Holdings, Inc. (hereinafter referred to as RETELCOM), a domestic corporation formed for the purpose of holding equity in telecommunications enterprises. Korea Telecoms, a telecommunications corporation organized and existing under the laws of the Republic of Korea, owns 20% thereof. The remaining 60% of RETELCOM's issued and outstanding capital stock is owned by TIMCO Holdings, Inc., a domestic corporation wholly-owned by respondents Jose Luis Santiago, Eleanor M. Santiago and Marilyn E. Santiago.

Pursuant to two joint venture agreements, RETELCOM became the holding company of three telecommunications companies, namely, Philippine Telegraph & Telephone Corporation (PT&T), Philippine Wireless, Incorporated (PWI) and Capitol Wireless, Incorporated.

On 5 March 1998, petitioners, claiming to represent RETELCOM, filed a derivative suit against the RETELCOM Board of Directors who are herein respondents, namely: Jose L. Santiago, Marilyn E. Santiago, Eleanor M. Santiago, James B. Lindenberg, Caesar U. Querubin, Hyung Shik Kim, Inho Lee, and RETELCOM's subsidiaries, PT&T and PWI.

The petition,[4] filed with the SICD of the SEC and docketed as SEC Case No. 03-98-5926, prayed for the nullification of three resolutions passed by the RETELCOM Board on 23 February 1998, namely Resolution Nos. 98-13, 98-14, and 98-15. The assailed resolutions authorized certain transactions with Qualcomm, Inc., a foreign corporation and supplier of wireless local loop equipment and facilities which were needed by PT&T and PWI to comply with the conditions under their respective legislative franchises.[5]

Seven of the nine directors of the RETELCOM Board, who are herein respondents, ratified the assailed

resolutions. The two dissenting directors are petitioners' representatives.[6]

In Resolution No. 98-13, the RETELCOM Board approved the Equipment Supply and Services Agreement (ESA) and the Credit Facility Agreement (CFA) between PT&T and Qualcomm, Inc. and endorsed the ESA and CFA to PT&T for the latter's approval.[7]

In Resolution No. 98-14, the RETELCOM Board ratified the Guarantee Agreement between RETELCOM, as guarantor, and Qualcomm, Inc., as lender, to secure PT&T's obligations under the CFA. The RETELCOM Board likewise authorized respondent Jose Luis Santiago to execute and deliver to Qualcomm, Inc. the Guarantee Agreement.[8]

In Resolution No. 98-15, the RETELCOM Board approved the Letter-Agreement for the purchase by PWI from Qualcomm, Inc. of personal communication system equipment and facilities.[9]

Petitioners averred that the RETELCOM Board belatedly furnished them with copies of the aforementioned agreements. After perusal of the agreements, petitioners found, so they alleged, grossly disadvantageous provisions therein. Specifically, the Guarantee Agreement allegedly contained false representations and warranties exposing RETELCOM and its stockholders to financial impact. Petitioners purportedly raised said observations during the 23 February 1998 board meeting and reiterated their demand for the RETELCOM Board to desist from executing and implementing said agreements. According to the A2 Group, the RETELCOM Board neither responded to its letters nor signified any intention of deferring the execution of the agreements.

Petitioners sought the issuance of a writ of preliminary injunction and temporary restraining order (TRO) to enjoin the RETELCOM Board from executing or implementing the Guarantee Agreement and endorsing the ESA and CFA to PT&T and the Letter-Agreement to PWI for appropriate action.

After hearing, the SICD issued on 9 March 1998 a TRO effective for 72 hours.[10] On 12 March 1998, the SICD issued an order extending the TRO to 20 days.[11] After another set of hearings, the SICD ordered on 27 March 1998 the issuance of a writ of preliminary injunction upon posting of a bond enjoining the RETELCOM Board from executing and/or implementing the questioned agreements.[12] The writ itself was issued on 30 March 1998.[13]

The RETELCOM Board elevated the matter to the SEC en banc via two separate petitions for certiorari with a prayer for the issuance of a TRO and a writ of preliminary injunction, which sought to nullify the three orders of the SICD issued on 9 March 1998, 12 March 1998 and 27 March 1998 and the writ of preliminary injunction dated 30 March 1998. The RETELCOM Board alleged grave and irreparable damage caused to herein respondents and to the general public by the issuance of the writ of preliminary injunction.

On 7 July 1998, the SEC en banc issued the Order[14] dismissing the petitions and affirming the questioned orders of the SICD. It found no grave abuse of discretion on the part of the SICD in issuing the writ of injunction, the purpose of which was to preserve the status quo before the filing of the derivative suit with the SICD, that is, prior to the finalization of the transactions between Qualcomm, Inc. and RETELCOM. The SEC en banc upheld the SICD's prima facie finding that bad faith had intervened during the negotiations of the contracts.

Herein respondents filed a petition for review with the Court of Appeals, docketed as CA-G.R. SP No. 48456, to appeal the 7 July 1998 Order of the SEC en banc, the three orders of the SICD issued on 9 March 1998, 12 March 1998 and 27 March 1998 and the writ of preliminary injunction dated 30 March 1998. The petition for review also prayed for an injunctive remedy. In its 27 August 1998 Resolution,[15] the Court of Appeals issued a TRO enjoining the implementation of the questioned orders of the SEC en banc and SICD, including the writ of preliminary injunction.

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Petitioners filed a petition for review on certiorari, docketed as G.R. No. 135074, before this Court, assailing the 27 August 1998 Resolution of the Court of Appeals. On 9 September 1998, the Court issued a TRO "effective immediately and continuing until further orders," ordering the Court of Appeals to desist from implementing its Resolution dated 27 August 1998.[16]

On 29 January 1999, the Court issued a Decision[17] in G.R. No. 135074, which set aside the 27 August 1998 TRO issued by the Court of Appeals. The Court ruled that herein respondents failed to show a clear positive right that must be protected by a TRO.[18]

On 3 March 1999, the Court of Appeals rendered the assailed Decision[19] in CA-G.R. SP No. 48456, the dispositive portion of which reads:

> WHEREFORE, finding merit in the petition for review filed by the petitioners, the same is hereby granted. The questioned orders of the SEC en banc and the SICD as well as the writ of preliminary injunction are hereby nullified and set aside. The SICD is hereby directed to proceed with dispatch in hearing and resolving the merit of the main petition (SEC Case No. 03-98-5926) filed by the A2 group against herein petitioners. (Annex "H," petition).
>
> SO ORDERED.[20]

Hence, the instant petition, praying for the reversal of the Court of Appeals' Decision based on the following reasons:

> I.
>
> THE COURT OF APPEALS HAS NO JURISDICTION TO ISSUE ANY DECISION ON THE PETITION FILED WITH IT.
>
> II.
>
> THE COURT OF APPEALS CANNOT OVERRULE A DECISION OF THIS HONORABLE COURT.
>
> III.
>
> THERE WAS NO LONGER ANY PETITION TO BE DECIDED BY THE COURT OF APPEALS.
>
> IV.
>
> ASUMING ARGUENDO THAT IT WAS PROPER FOR THE COURT OF APPEALS TO PROMULGATE THE HEREIN DECISION, SAID DECISION SHOULD BE REVERSED BECAUSE IT IS CONTRARY TO THE FACTS OF THE CASE, SETTLED LAW AND JURISPRUDENCE.[21]

Before the filing of the instant petition, petitioners submitted a Manifestation,[22] stating that Qualcomm, Inc. had backed out of the deal. Petitioners averred that Ericsson AB had acquired Qualcomm, Inc. and was no longer interested in pursuing Qualcomm, Inc.'s investment in RETELCOM. The newspaper clipping[23] annexed in support of the Manifestation reported on the search for a new investor that would infuse the needed equity in PT&T.

The Court directed the parties to explain why the petition should not be considered academic by reason of the supervening event cited in petitioners' Manifestation.[24]

Respondents assert that the instant case is not rendered moot and academic, citing other issues that remain to be litigated, which can be summarized as follows: (1) whether petitioners had the capacity and authority to file the derivative suit directly or on behalf of RETELCOM; (2) whether the derivative suit was, in reality, a strike suit;

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and (3) whether the assailed Court of Appeals' Decision overruled this Court's Resolution dated 29 January 1999 in G.R. No. 135074.

The first two issues are not being raised in the instant petition nor were they discussed and resolved in the assailed Court of Appeals' Decision. The general rule that an assignment of error is essential to appellate review and only those assigned will be considered applies in the absence of exceptional circumstances[25] obtaining in the instant case. The records reveal that respondents have raised these issues by way of defense to defeat the derivative suit filed before the SEC. The Court will not resolve these issues lest it would be preempting the outcome of the derivative suit still pending before the SEC or the lower court.

The lone issue tackled by the appellate court was whether the SICD and SEC en banc committed reversible error in issuing and upholding, respectively, the writ of preliminary injunction which enjoined the execution of the questioned agreements between Qualcomm, Inc. and RETELCOM.

The implementation of the agreements was restrained through the assailed orders of the SICD and the SEC en banc, which, however, were nullified by the Court of Appeals' Decision. Thus, petitioners elevated the matter to this Court praying for the reinstatement of the writ of preliminary injunction of the SICD and the SEC en banc. However, before the matter was finally resolved, Qualcomm, Inc. withdrew from the negotiating table. Its withdrawal had thwarted the execution and enforcement of the contracts. Thus, the resolution of whether the implementation of said agreements should be enjoined is no longer necessary.

Indeed, the instant petition, insofar as it assails the Court of Appeals' Decision nullifying the orders of the SEC en banc and the SICD, has been rendered moot and academic. To rule, one way or the other, on the correctness of the questioned orders of the SEC en banc and the SICD will be indulging in a theoretical exercise that has no practical worth in view of the supervening event.

The rule is well-settled that for a court to exercise its power of adjudication, there must be an actual case or controversy - one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice. Where the issue has become moot and academic, there is no justiciable controversy, and an adjudication thereon would be of no practical use or value as courts do not sit to adjudicate mere academic questions to satisfy scholarly interest, however intellectually challenging.[26]

In the ultimate analysis, petitioners are seeking the reinstatement of the writ of injunction to prevent the concerned parties from pushing through with transactions with Qualcomm, Inc. Given that Qualcomm, Inc. is no longer interested in pursuing the contracts, there is no actual substantial relief to which petitioners would be entitled and which would be negated by the dismissal of the petition.[27]

The Court likewise finds it unnecessary to rule whether the assailed Court of Appeals' Decision had the effect of overruling the Court's Resolution dated 29 January 1999, which set aside the TRO issued by the appellate court.

A ruling on the matter practically partakes of a mere advisory opinion, which falls beyond the realm of judicial review. The exercise of the power of judicial review is limited to actual cases and controversies. Courts have no authority to pass upon issues through advisory opinions or to resolve hypothetical or feigned problems.[28]

While there were occasions[29] when the Court passed upon issues although supervening events had rendered those petitions moot and academic, the instant case does not fall under the exceptional cases. In those cases, the Court was persuaded to resolve moot and academic issues to formulate guiding and controlling constitutional principles, precepts, doctrines or rules for future guidance of both bench and bar.

In the case at bar, the resolution of whether a writ of preliminary injunction may be issued to prevent the implementation of the assailed contracts calls for an appraisal of factual considerations which are peculiar only to the transactions and parties involved in this controversy. Except for the determination of whether petitioners are entitled to a writ of preliminary injunction which is now moot, the issues raised in this petition do not call for a clarification of any constitutional principle or the interpretation of any statutory provision.

Moreover, the resolution of the issue of whether the assailed Court of Appeals' Decision overturned the Court's Resolution in G.R. No. 135074 would have no operative consequence. The dispositive portion of the Resolution in G.R No. 135074 set aside the TRO issued by the Court of Appeals enjoining the SICD and SEC en banc from implementing the injunction, effectively allowing the SICD and SEC to execute the injunctive writ. On the other hand, the assailed Decision of the Court of Appeals nullified the writ of preliminary injunction. Thus, the only consequence of the determination of the issue would be either upholding the writ of preliminary injunction in the event of reversal of the assailed Decision or setting the writ aside if the assailed Decision is affirmed. As pointed above, the Court would then be indulging in an academic exercise to resolve a question that is already extinct.

WHEREFORE, the instant petition for review on certiorari is DENIED for being moot and academic.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.

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[1] Penned by Rodrigo V. Cosico, J., and concurred in by Jainal D. Rasul, Chairman, Seventh Division, and Delilah Vidallon Magtolis, JJ.; rollo, pp. 75-142.

[2] Id. at 9.

[3] Petitioners A2 Telecommunications International Holding Co. Pte. Ltd. and Beauty Fortune Investments Ltd. incorrectly impleaded as petitioners the members of the Securities, Investigation and Clearing Department (SICD) of the Securities and Exchange Commission. The members of the SICD do not have real interest in the subject matter and do not demand any relief through this petition. They are not even nominal or pro forma parties, which are required to be on record by the technical rules of pleadings, because none of the SICD's orders are being assailed in this petition.

[4] Rollo, pp. 197-216.

[5] Id. at 214-215.

[6] Id. at 46.

[7] Id.

[8] Id. at 47.

[9] Id.

[10] Id. at 398.

[11] Id. at 402-403.

[12] Id. at 405-410.

[13] Id. at 413-415.

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[14] Id. at 417-424.

[15] Id. at 426-427.

[16] Id.a t 428-429.

[17] Id. at 434-441.

[18] Id. at 438.

[19] Supra note 1.

[20] Rollo, p. 141.

[21] Id. at 50.

[22] Id. at 19-20.

[23] Id. at 27.

[24] Id. at 1059-1062.

[25] This Court has allowed the consideration of other grounds not raised or assigned as errors specifically in the following instances: (1) grounds not assigned as errors but affecting jurisdiction over the subject matter; (2) matters not assigned as errors on appeal but are evidently plain or clerical errors within the contemplation of the law; (3) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interest of justice or to avoid dispensing piecemeal justice; (4) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (5) matters not assigned as errors on appeal but closely related to an error assigned; and (6) matters not assigned as errors on appeal but upon which the determination of a question properly assigned is dependent (Hi-Tone Marketing v. Baikal Realty, G.R. No. 149992, August 20, 2004, 437 SCRA 120).

[26] People v. Peralta, G.R. No. 145176, March 30, 2004, 426 SCRA 472.

[27] Vda. de Dabao v. Court of Appeals, G.R. No. 116526, March 23, 2004, 426 SCRA 91.

[28] Sec. Guingona, Jr. v. Court of Appeals, 354 Phil. 415, 426 (1998).

[29] Atienza v. Villarosa, G.R. No. 161081, May 10, 2005, 458 SCRA 385; Chief Supt. Acop v. Sec. Guingona, Jr., 433 Phil. 62 (2002).

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