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THIRD DIVISION

[G.R. No. 211389; October 6, 2021]

EDGARDO C. DE LEON, *Petitioner*, *v.* **PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, INC.,** *Respondent*.

D E C I S I O N

LEONEN, *J.*:

Unless expressly prohibited by some other law, a public utility corporation may issue and repurchase redeemable shares upon the expiration of a fixed period.

This Court resolves the Petition for Review on *Certiorari*[1] filed by Edgardo C. De Leon (De Leon)[2] assailing the Court of Appeals Decision[3] and Resolution,[4] which affirmed the Regional Trial Court Resolution[5] granting Philippine Long Distance Telephone Company (PLDT), Inc.'s Motion to Declare the Complaint as a Nuisance or Harassment Suit.

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[1] *Rollo*, pp. 11-40.

[2] Petitioner Edgardo C. De Leon died on January 18, 2015 and was substituted by his heirs, namely: Gloria Almenar De Leon; Aileen Almenar De Leon, Catherine Almenar De Leon; Edgar Richie Almenar De Leon; and Edgar Glenn Almenar De Leon. *See rollo*, pp. 1100-1104. Notice of Death of Petitioner Edgardo C. De Leon and Notice of Substitution.

[3] *Rollo*, pp. 42-61. The August 30, 2013 Decision in CA-G.R. SP No. 126907 was penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Sesinando E. Villon and Florito S. Macalino of the Seventh Division, Court of Appeals, Manila.

[4] Id. at 63-65. The February 20, 2014 Resolution was penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Sesinando E. Villon and Florito S. Macalino of the Former Seventeenth Division, Court of Appeals, Manila.

[5] Id. at 101-106. The September 10, 2012 Resolution in Civil Case No. 12-217 was penned by Presiding Judge Cesar O. Untalan of Branch 149, Regional Trial Court, Makati City.

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In 1973, the State adopted the concept of "telephone subscriber self-financing"[6] through Presidential Decree No. 217, by which a telephone subscriber had to purchase shares of PLDT—the sole telephone utility at the time—to partly finance the corporation's capital investments in telephone installations. If preferred shares were issued under the subscriber self-financing plan, Presidential Decree No. 217 required that the subscriber be guaranteed "in all cases . . . a fixed annual income from his investment[,]" as well as the ability to convert "preferred capital stocks . . . into common shares, after a reasonable period and under reasonable terms, at the option of the preferred stockholder."[7]

De Leon owned 180 shares (under series T) of these preferred capital stocks, referred to in PLDT as Subscribers Investment Plan 10% Cumulative Convertible Preferred Stock (Subscriber Investment Plan preferred shares).[8] He acquired his shares on August 10, 1993,[9] and owned 10 common shares in PLDT as well, which he acquired on June 10, 1987.[10]

In the meantime, on June 28, 2011, this Court promulgated *Gamboa v. Teves*,[11] where the petitioner questioned a government sale of stock shares that would allegedly result in foreigners effectively controlling PLDT, a public utility, contrary to Article XII, Section 11[12] of the Constitution.

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[6] Presidential Decree No. 217, sec. 1(4).

[7] Presidential Decree No. 217, sec. 1(5).

[8] *Rollo*, p. 112.

[9] Id. at 44.

[10] Id. at 112.

[11] 668 Phil. 1 (2011) [Per J. Carpio, En Banc].

[12] CONST., art. XII, sec. 11 provides:
SECTION 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject

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Since this Court is not a trier of facts, it refused to rule on the factual issue of whether foreigners were effectively controlling PLDT in *Gamboa*. However, this Court proceeded to rule that a public utility corporation's voting shares of stock must at least be 60% Filipino-owned to be compliant with Article XII, Section 11 of the Constitution. Since *Gamboa* did not implead PLDT as respondent, this Court, applying its definition of "capital," directed the Securities and Exchange Commission's Chairperson to assess if PLDT indeed violated Article XII, Section 11 of the Constitution.[13]

Then, in a July 5, 2011 Resolution,[14] PLDT's Board of Directors proceeded to amend the Seventh Article of PLDT's Articles of Incorporation. PLDT's Authorized Preferred Capital Stock was subclassified into 150,000,000 shares of voting preferred shares, each with a par value of ₱1.00; and 807,500,000 shares of Non-Voting Serial Preferred Stock, each having a par value of ₱10.00.[15] On September 20, 2011, the Board of Directors scheduled a Special Stockholders Meeting to ratify the Resolution, but the meeting was cancelled due to absence of quorum.[16]

Subsequently, in a September 23, 2011 Resolution,[17] the PLDT Board of Directors authorized the redemption of Subscribers Investment Plan preferred shares effective January 19, 2012, covering all outstanding shares of 10% Cumulative Preferred Stocks, Series A to FF, as well as Series GG, HH, and II as soon as they became redeemable.

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to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

[13] *Gamboa v. Teves*, 668 Phil. 1-118 (2011) [Per J. Carpio, En Banc].

[14] *Rollo*, p. 44. Court of Appeals Decision.

[15] Id.

[16] Id.

[17] Id.

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PLDT mailed redemption notices[18] to the affected preferred shareholders, informing them that it had redeemed their shares. They were also given the option of either: (1) claiming their redemption payments; or (2) converting their preferred stocks to common shares on or before January 9, 2012. PLDT then published the redemption notices in newspapers, including the Philippine Daily Inquirer, Bandera, and the Philippine Star.[19]

Furthermore, PLDT opened a trust account with the Rizal Commercial Banking Corporation, where PLDT deposited the Redemption Trust Fund in favor of the affected shareholders. By January 19, 2012, PLDT had redeemed a total of 403,193,766 Subscribers Investment Plan preferred shares and converted approximately 3,024,474 of the preferred shares into common shares.[20]

Instead of surrendering his preferred shares or converting his preferred shares to common shares, De Leon wrote PLDT on January 31, 2012 together with Perfecto R. Yasay, Jr. (Yasay, Jr.), another preferred shareholder owning 180 Subscriber Investment Plan preferred shares. They objected to the redemption of the Subscribers Investment Plan preferred shares and demanded that PLDT reverse its earlier actions of either redeeming or converting the preferred shares.[21]

PLDT refused to undo the redemption, stating in a February 10, 2012 letter[22] that the redemption of the Subscribers Investment Plan preferred shares was consistent with the terms and conditions for redemption approved by the Board of Communications, now National Telecommunications Commission. However, De Leon and Yasay, Jr. insisted that the amendment of its Articles of Incorporation was "a desperate attempt to keep the foreign ownership of its shares within the limits allowed by the Constitution."[23]

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[18] Id. at 159-160.

[19] Id. at 45.

[20] Id.

[21] Id.

[22] Id.

[23] Id. at 46.

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Meanwhile, the PLDT Board of Directors issued another Resolution,[24] scheduling the Special Stockholders Meeting on March 22, 2012 for the approval of the amendment of the Seventh Article of PLDT's Articles of Incorporation.

De Leon and Yasay, Jr. then filed a Complaint[25] before the Regional Trial Court of Makati, seeking to enjoin the March 22, 2012 Special Stockholders Meeting and the nullification of PLDT's redemption of shares. They argued that PLDT violated the preferred shareholders' right to remain equity holders by redeeming its Subscriber Investment Plan preferred shares.[26] They added that the redemption intended to give way for the creation of 150,000,000 additional preferred shares that would otherwise be under foreign control, allegedly in violation of Article XII, Section 11 of the Constitution and Presidential Decree No. 217.[27]

However, the March 22, 2012 Special Stockholders Meeting pushed through without a temporary restraining order issued by the trial court. Subsequently, the amendment of the Seventh Article of PLDT's Articles of Incorporation to create the additional 150,000,000 voting preferred shares was approved.[28]

PLDT then filed its Answer with Compulsory Counterclaims.[29]

First, it argued that De Leon and Yasay, Jr. were no longer PLDT shareholders when they filed the Complaint, and that PLDT had previously redeemed their shares. Further, since De Leon and Yasay, Jr. were no longer shareholders, the suit was not an intra-corporate controversy that the trial court, a commercial court, can decide.[30]

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[24] Id.

[25] Id. at 107-127.

[26] Id. at 110.

[27] Id. at 110-111.

[28] Id. at 111.

[29] Id. at 213-279.

[30] Id. at 246.

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Second, PLDT contended that nothing in Presidential Decree 217 prohibited it from redeeming the Subscriber Investment Plan preferred shares.[31]

Lastly, PLDT argued that De Leon and Yasay, Jr. were barred from objecting to the terms and conditions of the Subscriber Investment Plan preferred shares, since these terms and conditions were indicated in the dorsal portion of the stock certificates issued to them.[32]

PLDT followed with a Motion to Declare the Complaint a Nuisance or Harassment Suit[33] under Rule 1, Section 1(b),[34] of the Interim Rules of Procedure for Intra-Corporate Controversies. According to PLDT, De Leon and Yasay, Jr.'s shareholdings were insignificant for the commercial court to take cognizance of the suit. It added that the complaint's legal and factual grounds are patently flimsy, and that the Securities and Exchange Commission is in a better position to hear the complaint. De Leon and Yasay, Jr. opposed the motion, arguing that their interest and standing to file the complaint "are supported by no less than the Constitution, the law[,] and rulings of the Supreme Court."[35]

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[31] Id. at 247.

[32] Id. at 255.

[33] Id. at 404-424.

[34] A.M. No. 01-2-04, sec. 1(b) provides:
SECTION 1. . . .
(b) *Prohibition against nuisance and harassment suits*. — Nuisance and harassment suits are prohibited. In determining whether a suit is a nuisance or harassment suit, the court shall consider, among others, the following:
(1) The extent of the shareholding or interest of the initiating stockholder or member;
(2) Subject matter of the suit;
(3) Legal and factual basis of the complaint;
(4) Availability of appraisal rights for the act or acts complained of; and
(5) Prejudice or damage to the corporation, partnership, or association in relation to the relief sought.

[35] *Rollo*, p. 103.

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In a September 10, 2012 Resolution,[36] the Regional Trial Court, Branch 149, Makati City, granted PLDT's Motion and declared De Leon and Yasay, Jr.'s complaint a nuisance and harassment suit. The trial court emphasized that as early as 1993 and 1998, De Leon and Yasay, Jr. respectively knew that their Subscriber Investment Plan preferred shares were redeemable by PLDT. Therefore, they cannot assail PLDT's redemption of their shareholdings.[37]

Furthermore, the trial court compared the extent of De Leon and Yasay, Jr.'s combined preferred equity of 360 shares with the 402,000,000 cumulative preferred shares already redeemed by PLDT, implying that De Leon and Yasay, Jr.'s shareholdings were too small relative to the rest of the other preferred shareholders.[38]

The trial court likewise found that nothing in Presidential Decree No. 217 prohibited PLDT from redeeming the Subscriber Investment Plan preferred shares. Section 1, paragraph 5 of Presidential Decree No. 217 merely provides for conditions for redeeming preferred shares, but nothing explicitly provides that redeeming the shares issued under PLDT's subscriber self-financing plan was not allowed. Even the then-Board of Communications approved PLDT's subscriber investment plan, including the term allowing the redemption of the preferred shares.[39] In the words of the trial court:

> The stock certificate of plaintiff Edgardo C. De Leon, particularly PLDT Series T 10% Cumulative Convertible Preferred Stock for 180 shares (Exhibit "A-1-TRO") was issued on August 10, 1993 while the stock certificates of plaintiff Perfecto R. Yasay Jr., particularly PLDT Series Y 10% cumulative Convertible Preferred Stock for 180 shares (Exhibit "A-2-TRO") was issued on April 13, 1998. On the dorsal portions of said stock certificates (Exhibits "A-1-dorsal-TRO" and "A-2-dorsal-TRO"), stated therein are the preferences, qualifications, limitations, restrictions and the relative or special rights in respect of

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[36] Id. at 101-106. The Resolution was penned by Presiding Judge Cesar O. Untalan.

[37] Id. at 105.

[38] Id.

[39] Id.

said shares wherein under paragraph 2 thereof, it is stated in substance, that "the Corporation at the option of the Board of Directors may redeem the Series (T and Y) 10% Cumulative Convertible Preferred Stock at the time outstanding." Thus, evident therefrom is the fact that since August 10, 1993 in the case of Edgardo C. De Leon and since April 13, 1998 in the case of Perfecto R. Yasay, Jr., plaintiffs [had] knowledge and in fact knew that their respective SIP shares may be redeemed at the option of the Board of Directors of defendant PLDT; but they did not question the validity of said authority of the Board, not until the filing of the instant case on March 16, 2012, or after 14 to 19 years. Worse, out of the four hundred two million (402,000,000) Cumulative Convertible Preferred Stock which have been redeemed by defendant PLDT, plaintiffs' combined shares only amount to three hundred sixty (360); and it appears that no other shareholder/s of said preferred stocks are coming forward or have come forward to join them in this complaint. Moreover, the law relied upon by plaintiffs, the Presidential Decree No. 217 does not contain any prohibition relative to redemption of shares. Section 1, paragraph 5 merely provided for conditions if and when preferred capital stock is contemplated such as the assurance of a fixed annual income and that said preferred stocks be convertible into common shares at the option of the preferred stockholder. Nowhere in said provision does it [prohibit] the redemption of said preferred stocks. In fact, as early as September 10, 1973, the Board of Communications, which was tasked by PD 217 to implement said law issued an Order (Exhibit "5-TRO") provisionally approving the conditions of the said subscriber financing scheme of PLDT, wherein on page 7 thereof, redemption of said shares was allowed at the option of the company. Considering the foregoing backdrop, the instant complaint is clearly a nuisance and harassment suit.

. . . .

WHEREFORE, premises considered, the Motion to Declare the instant Complaint as a Nuisance or Harassment Suit dated July 2, 2012 filed by defendant is hereby GRANTED, hence, the instant Complaint is hereby DISMISSED.[40]

The Court of Appeals agreed with the trial court. In its August 30, 2013 Decision,[41] it echoed the trial court's finding that nothing in Presidential Decree No. 217 prohibited PLDT from

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[40] Id. at 105-106.

[41] Id. at 42-61.

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redeeming the Subscribers Investment Plan preferred shares it had issued. All that Presidential Decree No. 217 required was for the telecommunications utility to assure its shareholders a fixed annual income on their investments and the option to convert their preferred shares to common shares. Furthermore, contrary to De Leon and Yasay, Jr.'s allegation, preferred shareholders were not compelled to convert their shares to common shares. They were informed upon issuance of their respective stock certificates that their shares would be redeemable or convertible to common shares on a certain date.[42]

The Court of Appeals likewise found that the extent of De Leon and Yasay, Jr.'s combined shareholding—360 shares to be exact—was insignificant for them to even question PLDT's redemption of the Subscribers Investment Plan preferred shares. Further, PLDT already redeemed De Leon and Yasay, Jr.'s shares at the time they filed their Complaint. Therefore, the trial court correctly declared their Complaint as a nuisance and harassment suit, since they were no longer shareholders with personality to initiate the intra-corporate dispute.[43]

Lastly, the Court of Appeals found no attempt on the part of De Leon and Yasay, Jr. to substantiate their claim that PLDT redeemed the Subscriber Investment Plan preferred shares to give foreign nationals control over the company. According to the Court of Appeals, "[their] claim that the creation of the additional preferred shares was meant to circumvent the decision of the Supreme Court in *Gamboa v. Teves* . . . necessarily fails in the absence of any evidence to support the same."[44]

For these reasons, the Court of Appeals denied De Leon and Yasay, Jr.'s appeal and affirmed the Regional Trial Court Decision. The dispositive portion of the August 30, 2013 Decision reads:

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[42] Id. at 53-56.

[43] Id. at 56-58.

[44] Id. at 58-60.

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WHEREFORE, the instant petition for review is hereby **DENIED**. The September 10, 2012 Resolution of the Regional Trial Court, Branch 149, Makati City is hereby **AFFIRMED**.

SO ORDERED.[45]

De Leon and Yasay, Jr. filed a Motion for Reconsideration, which the Court of Appeals denied in its February 20, 2014 Resolution.[46]

On April 11, 2014, De Leon alone filed a Petition for Review on Certiorari.[47] Upon the directive of this Court,[48] respondent filed its Comment,[49] to which petitioner filed a Reply.[50]

In an April 6, 2015 Resolution,[51] the parties were ordered to file their respective memoranda. With the parties having filed their respective Memoranda,[52] the case was deemed submitted for decision.

The issues for this Court's resolution are:

First, whether or not Presidential Decree No. 217 barred respondent PLDT from redeeming its Subscriber Investment Plan preferred shares;

Second, whether or not respondent PLDT's redemption of the Subscriber Investment Plan circumvented the nationality requirement of Article XII, Section 11 of the Constitution for public utilities and this Court's ruling in *Gamboa*;

Third, whether or not petitioner Edgardo C. De Leon's Complaint was a nuisance or harassment suit; and

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[45] Id. at 60.

[46] Id. at 63-65.

[47] Id. at 11-40.

[48] Id. at 976.

[49] Id. at 988-1031.

[50] Id. at 1037-1049.

[51] Id. at 1060-1062.

[52] Id. at 1065-1092 and 1133, 1176.

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Fourth, whether or not the validity of the issuance of the additional preferred shares during the January 19, 2012 Special Stockholders Meeting can be raised as an issue before the Court of Appeals.

Petitioner died on January 18, 2015 and was substituted by his heirs, namely: (1) Gloria Almenar De Leon; (2) Aileen Almenar De Leon; (3) Catherine Almenar De Leon; (4) Edgar Richie Almenar De Leon; and (5) Edgar Glenn Almenar De Leon (collectively, the Heirs of De Leon).[53]

Together, the Heirs of De Leon now contend that Presidential Decree No. 217 explicitly provides that the option to convert the preferred shares issued by a telephone utility, such as PLDT, belongs to the preferred stockholder. They further argue that respondent exercised an option not belonging to it when it redeemed the Subscriber Investment Plan preferred shares, and that the terms and conditions in the dorsal portion of the stock certificates allowing respondent to convert the preferred shares to common shares were void for being contrary to law.[54]

The Heirs of De Leon add that Presidential Decree No. 217 was issued to ensure the "widespread ownership of public utilities,"[55] and so that their capital stock is funded by as many individual investors as possible. Respondent allegedly went against the policy of Presidential Decree No. 217 by redeeming the Subscriber Investment Plan preferred shares; again, rendering the redemption void.[56]

They further maintain that the redemption was not only void for being contrary to Presidential Decree No. 217, but that it was also done to avoid the required quorum and votes for the amendment of the Seventh Article of PLDT's Articles of Incorporation and for the creation of the 150,000,000 additional preferred shares.

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[53] Id. at 1100-1104. Notice of Death of Petitioner Edgardo C. De Leon and Notice of Substitution.

[54] Id. at 1074-1075.

[55] Presidential Decree No. 217, sec. 1(3).

[56] *Rollo*, p. 1075.

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They claim that the additional preferred shares were created to circumvent the nationality requirements for public utilities under Article XII, Section 11 of the Constitution, as well as the ruling in *Gamboa*, which provided that a public utility corporation's "capital" under Article XII, Section 11 consists of shares of stock entitled to vote. Thus, by redeeming the Subscribers Investment Plan preferred shares, respondent's outstanding capital stock allegedly became dominated by aliens.[57]

The Heirs of De Leon assert that the Complaint filed before the trial court was neither a nuisance nor a harassment suit. According to them, the policy behind Presidential Decree No. 217 was to give widespread ownership over telephone utilities while also giving significance to each individual stockholder. As such, the trial court erred in declaring petitioner's 180 Subscriber Investment Plan preferred shareholdings as insignificant to declare his Complaint a nuisance or harassment suit. Besides, even after redeeming his Subscriber Investment Plan preferred shareholdings, De Leon still had 1,027 common shares in PLDT. As a stockholder, he had sufficient interest to question respondent's corporate acts.[58]

Lastly, the Heirs of De Leon argue that the Court of Appeals erred in refusing to rule on the validity of the creation of the 150,000,000 additional preferred shares simply because petitioner and Yasay, Jr. did not raise the issue in their Complaint. Nevertheless, even if it were true that the issue was not raised in the Complaint, petitioner and Yasay, Jr. prayed that the holding of the March 22, 2012 Special Stockholders Meeting be prohibited. Further, considering that the creation of the 150,000,000 additional preferred shares was "but a natural consequence"[59] of the Special Stockholders Meeting, this matter was neither irrelevant nor immaterial to the Complaint's resolution.[60]

Respondent counters and reiterates that nothing in Presidential Decree No. 217 prohibits the imposition of other terms and

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[57] Id. at 1075-1079.

[58] Id. at 1079-1086.

[59] Id. at 1087.

[60] Id. at 1086-1087.

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conditions, including the redemption, of preferred shares issued under its subscriber self-financing plan. Presidential Decree No. 217 even provides that the shareholder's option to convert the preferred shares into common shares is subject to "reasonable terms."[61]

In the case of respondent, the then-Board of Communications approved the condition that the preferred shares be redeemable. Presidential Decree No. 1874 amended Presidential Decree No. 217 and provided that "all decisions or orders of the National Telecommunications Commission heretofore issued approving subscriber investment plans or revisions thereof, are hereby declared valid and legal in all respects."[62] With no proof that the approval of respondent's Subscriber Investment Plan preferred shares had been revoked, the redeemable character of the preferred shares should then be deemed valid and legal in all respects.[63]

Respondent adds that petitioner did not even attempt to substantiate his claim that the additional 150,000,000 preferred shares will be owned and controlled by foreign nationals to circumvent Article XII, Section 11[64] of the Constitution and this

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[61] Presidential Decree No. 217, sec. 1(5).

[62] Presidential Decree No. 217, as amended by Presidential Decree No. 1874, sec. 4.

[63] *Rollo*, pp. 1156-1160.

[64] CONST., art. XII, sec. 11 provides:

SECTION 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

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Court's ruling in *Gamboa*.[65] At any rate, respondent stresses that its Articles of Incorporation was amended, and that the additional 150,000,000 preferred shares were created precisely to preempt any business disruption that may arise because of the Court's ruling in *Gamboa*. Thus, petitioner's claim was merely speculative and was correctly rejected by the Court of Appeals.[66]

Respondent maintains that petitioner's Complaint was a nuisance and harassment suit. At the time he and Yasay, Jr. filed the Complaint to enjoin the March 22, 2012 Special Stockholders Meeting, petitioner was no longer a PLDT stockholder, divesting him of any interest or personality to bring an intra-corporate dispute against respondent. Further, even if his 180 Subscriber Investment Plan preferred shares are considered, the extent of his shareholdings is insignificant and *de minimis* compared to the rest of the preferred shareholders whose shares have been redeemed.[67]

Respondent points out that the factual allegation regarding the 1,027 common shares—that petitioner reportedly still held upon filing the Complaint—was only mentioned in the Memorandum filed before this Court, and not before the trial court and the Court of Appeals. The allegation, therefore, should not be considered at this phase of the proceedings. Assuming that the allegation is true, the extent of the 1,027 common shares is still insignificant and *de minimis*, rendering petitioner's Complaint a nuisance or harassment suit under A.M. No. 01-2-04-SC, or the Interim Rules of Procedure for Intra-Corporate Controversies.[68]

Furthermore, because the transaction assailed in this case is private in nature, respondent argues that petitioner cannot invoke his right to due process of law, a right only invokable against the government and not to private entities such as PLDT.[69]

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[65] 668 Phil. 1 (2011) [Per J. Carpio, En Banc].

[66] *Rollo*, pp. 1168-1172.

[67] Id. at 1160-1166.

[68] Id. at 1163-1164.

[69] Id. at 1165.

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Lastly, respondent contends that the Court of Appeals correctly held that the issue of the additional 150,000,000 preferred shares' validity is immaterial and irrelevant simply because it was not raised in petitioner and Yasay, Jr.'s Complaint. Besides, it is the Securities and Exchange Commission, and not the courts, which has jurisdiction to determine the extent of allowable foreign ownership of a corporation, as expressly held in *Gamboa*. Consequently, the trial court and the Court of Appeals correctly refused to rule on the validity of the additional 150,000.000 preferred shares created during the March 22, 2012 Special Stockholders Meeting.[70]

The Petition for Review on *Certiorari* is denied.

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For reference, Presidential Decree No. 217 is quoted in full below:

PRESIDENTIAL DECREE NO. 217

ESTABLISHING BASIC POLICIES FOR THE TELEPHONE INDUSTRY, AMENDING FOR THE PURPOSE THE PERTINENT PROVISIONS OF COMMONWEALTH ACT NO. 146, AS AMENDED, OTHERWISE KNOWN AS THE PUBLIC SERVICE ACT, THE FRANCHISE OF THE PHILIPPINE LONG DISTANCE TELEPHONE COMPANY UNDER ACT NO. 3436, AS AMENDED, AND ALL INCONSISTENT LEGISLATIVE AND MUNICIPAL FRANCHISES INCLUDING OTHER EXISTING LAWS

WHEREAS, telephone service is a crucial element in the conduct of business activity, the availability of which on a regular and uninterrupted basis is essential for the smooth and efficient functioning of industry;

WHEREAS, efficient telephone service contribute directly to national development by facilitating trade and commerce;

WHEREAS, the telephone industry is one of the most highly capital intensive industries;

WHEREAS, the telephone industry has fundamentally different financing characteristics from other utilities in that capital requirements per telephone unit installed increase the number of customers serviced also increases instead of decreasing in cost per unit as in power and water utilities;

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[70] Id. at 1166-1168.

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WHEREAS, continued reliance on the traditional sources of capital funds through foreign and domestic borrowing and through public ownership of common capital stock will result in a high cost of capital, heavy cash requirements for amortization and thus eventually in higher effective cost of telephone service to subscribers;

WHEREAS, the subscribers to telephone service tend to be among the residents of urban areas and among the relative higher income segment of the population;

WHEREAS, it is in the interest of the national economy to encourage savings and to place these savings in productive enterprises;

WHEREAS, it is the announced policy of the government to encourage the spreading out of ownership in public utilities;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, as Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081 dated September 21, 1972, and General Order No. 1 dated September 22, 1972, as amended, do hereby decree and adopt, as part of the law of the land the following:

SECTION 1. It is declared that in the interest of the social, economic and general well-being of the people, the state hereby adopts the following basic policies of the telephone industry:

1. The attainment of efficient telephone service for as wide an area as possible at the lowest reasonable cost to the subscriber;

2. The expansion of telephone service shall be financed through an optimal combination of domestic and foreign sources of financing and an optimal combination of debt and equity funds so as to minimize the aggregate cost of capital of telephone utilities;

3. Consistent with the declared policy of the State to attain widespread ownership of public utilities, the capital requirements of telephone utilities obtained from ownership funds shall be raised from a broad base of investors, involving as large a number of individual investors as may be possible;

4. In line with the objective of spreading ownership among a wide base of the people, the concept of telephone subscriber self-financing is hereby adopted whereby a telephone subscriber finances part of the capital investments in telephone installations

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through the purchase of stocks, whether common or preferred stock, of the telephone company;

5. As part of any subscriber self-financing plan, when the issuance of preferred capital stock is contemplated, it is required that the subscriber be assured in all cases of a fixed annual income from his investment and that these preferred capital stocks be convertible into common shares, after a reasonable period and under reasonable terms, at the option of the preferred stockholder; and

6. In any subscriber self-financing plan, the amount of subscriber self-financing will, in no case, exceed fifty per centum (50%) of the cost of the installed telephone line, as may be determined from time to time by the regulatory bodies of the State.

SECTION 2. The Department of Public Works, Transportation and Communications through its Board of Communications and/or appropriate agency shall see to it that the herein declared policies for the telephone industry are immediately implemented and for this purpose pertinent rules and regulations may be promulgated.

SECTION 3. The pertinent provisions of the Public Service Act, as amended, the franchise of the Philippine Long Distance and Telephone Company under Act 3436, as amended, all existing legislative and/or municipal franchises and other laws, executive orders, proclamations, rules and regulations or parts thereof, as are in conflict with the provisions of this decree are hereby repealed or modified accordingly.

SECTION 4. This Decree shall take effect immediately. (Emphasis in the original)

From the text of Presidential Decree No. 217, nothing prohibited respondent from redeeming the preferred shares of stock it had issued under its subscriber self-financing plan, which it called the Subscriber Investment Plan. Further, PLDT's 1973 Amended Articles of Incorporation provided that the Subscriber Investment Plan preferred shares it had issued were redeemable:

1. The holder of the (Series T) 10% Cumulative Convertible Preferred Stock shall be entitled to receive when as and if declared by the Board of Directors, dividends in cash at the rate of 10% per share per annum, payable semi-annually on the last business days of May and November in each year to stockholder of record and the respective dates, not

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exceeding fifty (50) days proceeding [sic] such dividends payment date fixed for the purpose by the Board of Directors in advance of each particular dividends.

2. After (December 31, 1998) the corporation at the option of the Board of Directors, may redeem the Series T 10% Cumulative Convertible Preferred Stock at the time outstanding, in whole or in part, at [any time] or from time to time, upon notice duly given as hereinafter provided, by paying therefor in cash the amount equivalent to the par value of the shares to be so redeemed, plus accrued and unpaid dividends thereon to the date fixed for redemption.

3. After December 31, 1994 . . . any holder of Stock may at any time or from time to time (but in case his shares have been called for redemption, then only on or prior to the tenth day preceding the date fixed for such redemption, unless default shall be made in the payment of the redemption price) convert all or any of the shares of such Series T 10% Cumulative Convertible Preferred Stock held by him into fully paid and non-assessable shares of Common Capital Stock of the corporation, at a conversion price equivalent to 10% below the average of the high and low daily sales price of a share of Common Capital Stock on the Manila and Makati Stock Exchanges.[71] (Emphasis supplied)

The redeemability of the Subscriber Investment Plan preferred shares was reiterated in the dorsal portion of the stock certificates issued to the subscribers, providing that "the Corporation at the option of the Board of Directors may redeem the Series [T] 10% Cumulative Convertible Preferred Stock at the time outstanding."[72]

These terms and conditions were likewise approved by the then-Board of Communications and are deemed "valid and legal in all respects"[73] by Presidential Decree No. 1874, which

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[71] Id. at 43-44.

[72] Id. at 105.

[73] Presidential Decree No. 217, as amended by Presidential Decree No. 1874, sec. 4 provides:

SECTION 4. All decisions or orders of the National Telecommunications Commission heretofore issued approving subscriber investment plans or revisions thereof, are hereby declared valid and legal in all respects, excepting such decisions or orders as, on the date of this Decree, are pending review by the Supreme Court.

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amended Presidential Decree No. 217, especially since there is no proof that these terms and conditions have been set aside.

Since they were informed of these terms and conditions when they acquired their shareholdings, petitioner and Yasay, Jr. may not belatedly object to them.

Besides, as mandated by Presidential Decree No. 217, respondent actually gave the Subscriber Investment Plan preferred shareholders the option to convert their preferred shares to common shares "after a reasonable period and under reasonable terms."[74] Specifically, in the October 21, 2011 Notice of Redemption sent to the preferred shareholders, they were given until January 9, 2012 to convert their shares to common shares; otherwise, their shares of stock will be deemed redeemed, and their redemption payments will be deposited in a trust fund. The provision that the unconverted preferred shares are deemed redeemed if they are not converted after more or less than two months is, to the mind of this Court, a "reasonable term" for the conversion of the preferred shares.

It is true that the objective behind the issuance of the Subscriber Investment Plan preferred shares is "to attain widespread ownership of public utilities[.]"[75] Nevertheless, as contended by respondent, the widespread ownership of it is not just achievable through the ownership of the preferred shares. Respondent further alleges that as of January 2012, it has around 12,000 stockholders of record, which still excludes the beneficial owners of shares held on record by brokers, custodians, and trustees.[76] This allegation

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[74] Presidential Decree No. 217, sec. 1(5) provides:
SECTION 1. It is declared that in the interest of the social, economic and general well-being of the people, the state hereby adopts the following basic policies of the telephone industry:
. . . .
5. As part of any subscriber self-financing plan, when the issuance of preferred capital stock is contemplated, it is required that the subscriber be assured in all cases of a fixed annual income from his investment and that these preferred capital stocks be convertible into common shares, after a reasonable period and under reasonable terms, at the option of the preferred stockholder; and

[75] Presidential Decree No. 217, sec. 1(3).

[76] *Rollo*, p. 1159.

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was never controverted. Hence, with the public owning 54% of respondent's common shares, it can be deemed widely owned by the public, especially since its public ownership exceeds the 30% minimum public offering prescribed in Republic Act No. 7925, or the Public Telecommunications Policy Act of the Philippines.[77]

All told, the redemption of the preferred shares under respondent's subscriber self-financing plan did not violate Presidential Decree No. 217.

II

The Heirs of De Leon nevertheless maintain that the Subscriber Investment Plan was redeemed to remedy the lack of quorum to ratify the amendment of the Seventh Article of PLDT's Article of Incorporation, which resulted in the creation of the additional 150,000,000 voting preferred shares. They aver that these additional 150,000,000 preferred shares were created to circumvent the nationality requirement for public utilities under Article XII, Section 11 of the Constitution and this Court's ruling in *Gamboa*.

This Court disagrees, mainly because petitioner had no evidence substantiating his allegations. It is true that as a public utility corporation, at least 60% of PLDT's capital must be Filipino-owned. Article XII, Section 11 of the Constitution provides:

ARTICLE XII
National Economy and Patrimony

. . . .

SECTION 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty *per centum* of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public.

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[77] Id.

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The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines. (Underscoring provided)

Furthermore, in *Gamboa*, this Court held that the "capital" referred to in Article XII, Section 11 consists of stock shares entitled to vote in the election of directors, which, in respondent's case, are the common shares:

The term "capital" in Section 11, Article XII of the Constitution refers only to shares of stock entitled to vote in the election of directors, and thus in the present case only to common shares, and not to the total outstanding capital stock comprising both common and non-voting preferred shares.

. . . .

Indisputably, one of the rights of a stockholder is the right to participate in the control or management of the corporation. This is exercised through his vote in the election of directors because it is the board of directors that controls or manages the corporation. In the absence of provisions in the articles of incorporation denying voting rights to preferred shares, preferred shares have the same voting rights as common shares. However, preferred shareholders are often excluded from any control, that is, deprived of the right to vote in the election of directors and on other matters, on the theory that the preferred shareholders are merely investors in the corporation for income in the same manner as bondholders. In fact, under the Corporation Code only preferred or redeemable shares can be deprived of the right to vote. Common shares cannot be deprived of the right to vote in any corporate meeting, and any provision in the articles of incorporation restricting the right of common shareholders to vote is invalid.

Considering that common shares have voting rights which translate to control, as opposed to preferred shares which usually have no voting rights, the term "capital" in Section 11, Article XII of the Constitution refers only to common shares. However, if the preferred shares also have the right to vote in the election of directors, then the term "capital" shall include such preferred shares because the right to participate in the control or management of the corporation is exercised through the right to vote in the election of directors. **In short, the term**

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"capital" in Section 11, Article XII of the Constitution refers only to shares of stock that can vote in the election of directors.[78] (Emphasis in the original)

Here, petitioner did not explain how he arrived at the conclusion that redeeming the Subscriber Investment Plan preferred shares would result in the violation of Article XII, Section 1 of the Constitution. First, as found earlier, the redemption of the Subscriber Investment Plan preferred shares was done in accordance with law, specifically, Presidential Decree No. 217. Second, there is no evidence that the creation of the additional 150,000,000 voting preferred shares will result in foreign control of respondent's voting stock. De Leon's conclusion is *non sequitur*.

Gamboa cannot be made basis to claim that respondent already violated Article XII, Section 11 of the Constitution. Notably, this Court in *Gamboa* refused to rule on the petitioner's factual claim that foreigners effectively controlled PLDT's capital. Instead, this Court focused on the legal issue of whether or not "capital" in Article XII, Section 11 of the Constitution refers to total common shares or total outstanding capital stock, including voting and non-voting shares.[79] In other words, there was no factual finding that PLDT actually violated Article XII, Section 11 of the Constitution.

With no evidence that respondent redeemed the Subscriber Investment Plan to circumvent the Constitution, petitioner's allegations are mere speculations, which the Court of Appeals correctly rejected and dismissed.

III

Petitioner's Complaint was correctly dismissed for being a nuisance and harassment suit. Rule 1, Section 1(b) of the Interim Rules of Procedure for Intra-Corporate Controversies enumerates the factors to consider in determining whether a suit is a nuisance or harassment suit:

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[78] *Gamboa v. Teves*, 668 Phil. 1-118 (2011) [Per J. Carpio, En Banc].

[79] Id.

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RULE 1
General Provisions

SECTION 1. . . .

(b) *Prohibition against nuisance and harassment suits*. - Nuisance and harassment suits are prohibited. In determining whether a suit is a nuisance or harassment suit, the court shall consider, among others, the following:

(1) The extent of the shareholding or interest of the initiating stockholder or member;
(2) Subject matter of the suit;
(3) Legal and factual basis of the complaint;
(4) Availability of appraisal rights for the act or acts complained of; and
(5) Prejudice or damage to the corporation, partnership, or association in relation to the relief sought.

As found by both the trial court and the Court of Appeals, the extent of petitioner's shareholding and interest was indeed *de minimis*, even non-existent, at the time of the Complaint's filing. To recall, when petitioner filed the Complaint on March 16, 2012,[80] his Subscriber Investment Plan preferred shares had already been redeemed on January 9, 2012. He was not even a PLDT preferred stockholder with a substantial interest to question the redemption of the Subscriber Investment Plan preferred shares and the holding of the March 22, 2012 Special Stockholders Meeting.

Even if we consider petitioner's earlier ownership of 180 Subscriber Investment Plan preferred shares, again, he still lacked substantial interest in PLDT to file the Complaint and question the redemption of the Subscriber Investment Plan preferred shares. The extent of his interest was around 0.00004% of the 403,193,766 Subscriber Investment Plan preferred shares redeemed by respondent.[81] Except for Yasay, Jr. who had joined petitioner in filing the Complaint, the rest of the stockholders who cumulatively

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[80] *Rollo*, p. 46.

[81] Id. at 56-57.

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held the 99.99992% of the Subscriber Investment Plan preferred shares did not question the redemption of their preferred shares. Indeed, petitioner's Complaint was a nuisance suit.

For the first time in these proceedings, petitioner alleged that he had 1,027 common shares by the end of 2013. However, this extent of interest will still not suffice: (1) because the allegation regarding the 1,027 common shares was made belatedly and, therefore, remains unsubstantiated; and (2) because the extent of petitioner's interest was still insufficient for him to question the acts of the respondent's Board of Directors in redeeming the Subscriber Investment Plan preferred shares. As of 2013, respondent had 216,000,000 common shares of stock, rendering petitioner's 1,027 a mere 0.00047% of respondent's total common shares of stock.[82]

It is true that in *Gamboa*,[83] this Court held that the petitioner, as a PLDT shareholder, had the legal standing to question the government's sale of its 111,415 shares in Philippine Telecommunications Investment Corporation to First Pacific Company Limited, which would result in foreign ownership of PLDT beyond what is allowable by the Constitution. Still, *Gamboa* cannot be made basis here to claim that petitioner has the requisite interest to file the Complaint before the trial court.

In *Gamboa*, it was undisputed that the petitioner was a PLDT shareholder at the time he filed the original petition before this Court. Furthermore, the issue in *Gamboa* was of true transcendental importance, a constitutional issue of whether or not the government's sale of shares will result in a violation of the nationality requirement for public utilities as provided in Article XII, Section 11 of the Constitution.

However, unlike the petitioner in *Gamboa*, petitioner here was no longer a preferred stockholder when he questioned the redemption of the Subscriber Investment Plan preferred shares. In addition, a reading of his Complaint and its Prayer reveals

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[82] Id. at 1160-1164.

[83] 668 Phil. 1 (2011) [Per J. Carpio, En Banc].

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that petitioner only questioned the redemption of the Subscribers Investment Plan preferred shares, and his exclusion from the March 22, 2012 Special Stockholders Meeting and the subsequent stockholders meeting.[84] In other words, the Complaint involved purely private interests, as opposed to the public interest involved in *Gamboa*.

While *Gamboa* was mentioned in the Complaint, the mere allegation that the creation of the 150,000,000 voting preferred shares violated the Constitution will not suffice. The issue raised here, unlike in *Gamboa*, was not of such transcendental importance to give petitioner legal standing to question the redemption of the Subscriber Investment Plan preferred shares.

In sum, petitioner's Complaint was correctly dismissed for being a nuisance and harassment suit.

IV

Petitioner's Complaint did not raise as an issue the validity of the additional 150,000,000 preferred shares created during the March 22, 2012 Special Stockholders Meeting. All petitioner prayed for in his Complaint was an injunction to prohibit respondent from excluding the shares of the Subscriber Investment Plan preferred shareholders in determining quorum during the March 22, 2012 Special Stockholders Meeting, as well as for any subsequent meetings.[85] Consequently, the issue was correctly disregarded by the Court of Appeals.

In any case, the Securities and Exchange Commission has jurisdiction to disapprove any amendments to articles of incorporation on the ground that the percentage of the capital stock ownership by Filipino citizens has not been complied with, as required by the Constitution or existing laws.[86] Instead of filing the Complaint before the trial court, petitioner should have

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[84] *Rollo*, pp. 121-122.

[85] Id.

[86] *Gamboa v. Teves*, 668 Phil. 1-118 (2011) [Per J. Carpio, En Banc], *citing* Batas Pambansa Blg. 68, sec. 17(4).

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filed an action before the Securities and Exchange Commission to question the amendment of the Seventh Article of PLDT's Articles of Incorporation, which subclassified PLDT's Authorized Preferred Capital Stock into 150,000,000 Voting Preferred Shares and 807,500,000 shares of Non-Voting Serial Preferred Stock.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The August 30, 2013 Decision and February 20, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 126907 are **AFFIRMED**.

SO ORDERED.

Carandang, Zalameda, Rosario, and *Dimaampao,*[*] *JJ.*, concur.

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