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THIRD DIVISION

[G.R. No. 166984. August 7, 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.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; REMEDY AVAILABLE TO A THIRD PARTY WHO IS NOT ORIGINALLY IMPLEADED IN THE PROCEEDINGS; NOT PRESENT IN THE CASE AT BAR.— [I]ntervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant to enable him to protect or preserve a right or interest which may be affected by such proceedings. It is thus not available to an original party in the proceedings such as Atty. Alobba. And finally, a motion to intervene must be filed at any time before rendition of judgment by the trial court, unless it is shown that the person intervening in the appeal is an indispensable party. Atty. Alobba does not qualify as an indispensable party and her interest herein, as the purported Assistant Secretary of POTC and PHILCOMSAT, is only indirect and mediate.

2. ID.; ID.; ID.; NATURE OF THE PROCEEDINGS, DEFINED; IMPORTANT ELEMENTS.— The nature of intervention proceedings had been clearly and comprehensively defined by this Court in *Garcia v. David*, to wit: Intervention is a proceeding in a suit or action by which a third person is permitted by the court to make himself a party, either joining plaintiff in claiming what is sought by the complaint, or uniting with defendant in resisting the claims of plaintiff, or demanding something adversely to both of them; the act or proceeding by which a third person becomes a party in a suit pending between others; the admission, by leave of court, of a person not an original

party to pending legal proceedings, by which such person becomes a party thereto for the protection of some right or interest alleged by him to be affected by such proceedings. Fundamentally, therefore, intervention is never an independent action, but is ancillary and supplemental to the existing litigation. Its purpose is not to obstruct nor unnecessarily delay the placid operation of the machinery of trial, but merely to afford one not an original party, yet having a certain right or interest in the pending case, the opportunity to appear and be joined so he could assert or protect such right or interest. The law on intervention in this jurisdiction, is found in Section 121 of the Code of Civil Procedure, which is a verbatim copy of Section 387 of the Code of Civil Procedure of the State of California. x x x: x x x A cursory examination of the above provision will show three important elements: (1) That only a person having a legal interest in the subject matter of the litigation or in the success of either of the parties or an interest against both, may intervene; (2) that therefore a mere intruder or stranger who has no legal interest and whose presence would only make the proceeding complicated, expensive and interminable may not be allowed to intervene; (3) that the permissive tenor of the legal provision evinces the intention of the lawmaker to give to the judge, considering a motion for intervention, the full measure of discretion in permitting or disallowing said motion.

3. ID.; ID.; ID.; ID.; ID.; LEGAL INTEREST, CONSTRUED.— The legal interest required for an intervention must be actual and material, direct and immediate, and not simply contingent or expectant. It has been held "that the interest which entitles a person to intervene in a suit between other parties must be in the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment."

4. ID.; ID.; ID.; WHEN THE COURT HAS DISCRETION TO DENY INTERVENTION AND ALLOW LITIGANTS TO SETTLE THEIR CONTROVERSIES AMICABLY; PRESENT IN CASE AT BAR.— This Court thus exercises its discretion to deny the intervention when the same is for the purpose of delaying the proceedings and making it only more complicated and expensive. The parties to the original Petition, Nieto and Africa, together with the other stockholders of POTC,

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PHILCOMSAT, and PHC, had agreed among themselves to settle the controversies regarding the annual stockholders' meeting and the election of the members of the Board of Directors in the said corporations. Indeed, it is a sound policy for the Court to favor and encourage litigants to settle their controversies extra-judicially where the same is possible and lawful, not only because it minimizes the expenses and troubles a litigation usually entails, but also due to the fact that in most cases, such agreement redounds to the benefit of both parties and results in their mutual satisfaction. x x x The fact that the case has been submitted for resolution will not preclude the parties from amicably settling their differences, and this Court from dismissing the case based thereon upon proper motion by the parties. Submission of the case for resolution is the stage in the proceedings when the parties are already deemed to have presented before the Court all the issues, arguments, and evidence in support of their respective positions; and any issue, argument, or evidence presented thereafter may no longer be entertained by the Court. However, the Court, at this point, has no resolution or decision yet on the case, and the same is still far from being closed and terminated. The Court still maintains its jurisdiction over the case and may still accordingly act upon subsequent developments therein brought to its attention, such as the amicable settlement of the dispute by the parties.

5. LEGAL ETHICS; ATTORNEYS; DISCIPLINE OF LAWYERS; MISCONDUCT OF LAWYERS MUST BE DETERMINED IN SEPARATE ADMINISTRATIVE PROCEEDINGS.— This Court, however, refrains from any action on Africa's assertion that Atty. Alobba be disciplined by this Court for advancing an interest in conflict with that of her former client, Nieto. Any misconduct on the part of Atty. Alobba in relation to this case must be determined separately in the appropriate administrative proceedings which may be filed against her.

APPEARANCES OF COUNSEL

M.M. Lazaro & Associates for petitioner.

Catherine C. Naval and *Kristine Joy R. Diaz* for movant-intervenor.

Roxas Delos Reyes Laurel & Rosario for private respondent.

R E S O L U T I O N

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.

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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. Vernette G. Umali-Paco (Atty. Umali-Paco), issued an Order, dated 8 July 2004, with the following directive:

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[1] Order, dated 6 May 2004, issued by the Securities and Exchange Commission, through its General Counsel, Vernette G. Umali-Paco; *rollo*, pp. 108-116.

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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

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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

xxx xxx xxx

Accordingly, POTC, Philcomsat and Philcomsat Holdings Corporation (PHC) are hereby reminded to strictly adhere to the

[2] *Id*. at 101-102.

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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:

	Africa Group	**Nieto Group**
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] *Id*. at 103-104.

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		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

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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:

WHEREFORE, premises considered, it is respectfully prayed that this Honorable Court immediately issue a temporary restraining order and a writ of preliminary injunction enjoining:

1) the Securities and Exchange Commission, its officers, agents and representatives including its General Counsel, respondent Vernette G. Umali-Paco, from enforcing the Orders dated 8 July 2004, 26 July 2004 and 20 August 2004, and from continuing to act

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[4] *Id*. at 105-107.

[5] *Id*. at 65-97.

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against petitioners in the SEC Case No. 12-03-03 or on any other case involving the same issue:

2) Manuel H. Nieto, Jr., Luis K. Lokin, Jr., Alma Kristina O. Alobba, their principals, agents and any person acting on their behalf, from executing the **August 20 Order** of respondents SEC and Paco as regards the supposed validity of their meeting, from taking control of the management, operations and office premises of petitioners POTC and PHILCOMSAT and from doing any act that would tend to disrupt the operations of petitioners.

Further it is respectfully prayed that this instant Petition be granted by this Honorable Court consequently annulling and setting aside the aforementioned Orders and the proceedings of the Securities and Exchange Commission docketed as SEC Case No. 12-03-03 which relate to herein petitioners and by issuing writs of *certiorari* and prohibition to permanently enjoin the Securities and Exchange Commission, its officers, agents and representatives including its General Counsel, respondent Vernette G. Umali-Paco, from enforcing such Orders and continuing to act against petitioners in SEC Case No. 12-03-03 or any other case involving the same issues.

Other reliefs just and equitable are likewise prayed for.[6]

The Court of Appeals, acting on Africa's Petition, issued a Resolution, dated 31 August 2004,[7] ordering therein respondents to file their Comments within ten days from notice, and therein petitioners to file their Reply within five days from receipt of respondents' Comments. The same Resolution grants Africa's prayer for a TRO, in this wise:

In the meantime, since the petition questions the jurisdiction of public respondents [SEC and Atty. Umali-Paco] in issuing the assailed Orders dated July 8, 2004, July 26, 2004 and August 20, 2004, and the implementation of the same will render moot and academic any and all orders, resolutions and decision of this Court, this Court hereby **TEMPORARILY RESTRAINS** respondents, their officers, agents and other persons acting for and in their behalf, from enforcing,

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[6] *Id*. at 93-94.

[7] Penned by Associate Justice Remedios A. Salazar-Fernando with Presiding Justice (now Supreme Court Justice) Cancio C. Garcia and Associate Justice Hakim S. Abdulwahid, concurring; *id*. at 131-132.

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implementing and executing the aforesaid assailed Orders within a period of sixty (60) days or until sooner revoked.

Thereafter, the following developments took place in CA-G.R. SP No. 85959:

(1) The SEC and Atty. Umali-Paco filed successive motions for extension of time to file their Comment on Africa's Petition, which were granted by the Court of Appeals in its Resolutions, dated 20 September 2004, 12 October 2004, and 23 November 2004.[8] By virtue of the latest grant of extension, the SEC and Atty. Umali-Paco had until 24 November 2004 to file their Comment. Nieto also filed a motion for extension of time to file his Comment on the Petition, but before acting thereon, the appellate court required him to remit the required legal fees for his motion.

(2) Nieto filed an Urgent Manifestation[9] calling the attention of the Court of Appeals to the "badges of deliberate forum shopping" committed by Africa and his group. Nieto informed the appellate court that Africa had previously filed the following: (a) Complaint for Injunction with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction, docketed as Civil Case No. 04-935, with Branch 133 of the Makati City Regional Trial Court (RTC); (b) Petition for Injunction, docketed as Civil Case No. 01-555, with Branch 61 of the Makati City RTC; and (c) Letter for reconsideration of the assailed Orders in SEC Case No. 12-03-03 with the SEC. Upon being required by the Court of Appeals,[10] Africa filed his Comment[11] on Nieto's Urgent Manifestation.

(3) Nieto and Attys. Lokin and Alobba filed with the Court of Appeals their Joint Comment (With Grounds for Immediate Dismissal and Opposition to the Issuance of TRO and/or Preliminary Injunction).[12]

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[8] *Id*. at 130-A, 253, and 257-259.

[9] *Id*. at 138-153.

[10] *Id*. at 191.

[11] *Id*. at 192-198.

[12] *Id*. at 199-225.

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(4) On the other hand, Africa filed with the Court of Appeals a Motion to Resolve Application for the Issuance of a Writ of Preliminary Injunction; and a Reply to the Joint Comment of Nieto and Attys. Lokin and Alobba, with a motion to have the latter declared in contempt for insisting on executing, enforcing and implementing the assailed SEC Orders despite the TRO issued by the appellate court.

Without waiting for the Comment of the SEC and Atty. Umali-Paco on Africa's Petition, still due on 24 November 2004, the Court of Appeals already issued a Resolution, dated 25 October 2004, in which it ruled that there was no forum shopping on the part of Africa, for there was no identity of parties and issues between the civil cases before the Makati City RTCs and CA-G.R. SP No. 85959. Thus, it resolved to:

(a) **NOTE** private respondent Nieto's Urgent Manifestation;

(b) **DIRECT** private respondents [Nieto and Attys. Lokin and Alobba] to **SHOW CAUSE** within ten (10) days from notice why they should not be held in contempt for not honoring the temporary restraining order issued on August 31, 2004; and

(c) **ISSUE** a writ of preliminary injunction against the respondents [SEC and Atty. Umali-Paco; Nieto and Attys. Lokin and Alobba], their agents, officers, representatives and other persons acting for and in their behalf from executing, enforcing and implementing the assailed orders dated July 8, 2004, July 26, 2004 and August 20, 2004 upon the filing of a bond in the amount of **ONE MILLION (₱1,000,000.00) PESOS**.[13]

In a subsequent Resolution, dated 13 December 2004,[14] the Court of Appeals denied the Motion filed by Nieto and Attys. Lokin and Alobba for reconsideration of its 25 October 2004 Resolution; dismissed Africa's motion to cite Nieto and Attys. Lokin and Alobba in contempt; noted the Comment on Africa's

[13] Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Hakim S. Abdulwahid and Magdangal M. de Leon, concurring; *id*. at 55-58.

[14] *Id*. at 60-64.

Petition filed by the SEC and Atty. Umali-Paco; and gave due course to Africa's Petition and required the parties to file their respective memorandum.

Hence, Nieto, through his counsel, Atty. Alobba, comes before this Court *via* the present Petition for *Certiorari* under Rule 65 of the Rules of Court, with a prayer for TRO and/or preliminary injunction, naming the Court of Appeals as public respondent; and Africa and John/Jane Does styling themselves as the Board of Directors/Officers of the POTC and PHILCOMSAT as private respondents. He assails the Resolutions of the Court of Appeals, dated 25 October 2004 and 13 December 2004, and argues that the appellate court committed grave abuse of discretion in (1) granting the application for issuance of the writ of preliminary injunction without giving all the parties sought to be enjoined the opportunity to oppose the same; (2) granting the application for issuance of the writ of preliminary injunction despite the fact that the applicant Africa had not fully established entitlement to the same; and (3) finding that Africa did not commit forum shopping and not dismissing the Petition in CA-G.R. SP No. 85959 outright. His prayer reads:

WHEREFORE, premises considered, it is respectfully prayed that the Honorable Court:

1. **GIVE DUE COURSE** to the instant Petition;

2. **ISSUE** a Temporary Restraining Order:

    a. **ENJOINING** the respondent Court of Appeals, the herein private respondents, their agents, alter-egos and other persons possessing any interest, or who shall benefit from and/or are interested in sustaining the assailed Resolutions, from implementing and executing the **Resolutions** dated October 25, 2004 and December 13, 2004, and the **Writ of Preliminary Injunction** dated November 9, 2004 issued pursuant thereto;

    b. **SUSPENDING/ENJOINING** the proceedings in CA-G.R. No. 85959 pending the final resolution of the instant petition.

3. After notice and hearing, **ISSUE** the Writ of Preliminary Injunction:

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a. **ENJOINING** the respondent Court of Appeals, the herein private respondents [Africa and the John/Jane Does], their agents, alter-egos and other persons possessing any interest, or who shall benefit from and/or are interested in sustaining the assailed Resolutions, from implementing and executing the **Resolutions** dated October 25, 2004 and December 13, 2004, and the **Writ of Preliminary Injunction** dated November 9, 2004 issued pursuant thereto;

b. **SUSPENDING/ENJOINING** the proceedings in CA-G.R. No. 85959 pending the final resolution of the instant petition.

4. **ANNUL AND SET ASIDE** the assailed **Resolution dated October 25, 2004** and **Resolution dated December 13, 2004** rendered by the respondent Court of Appeals, for having been issued with grave abuse of discretion amounting to lack of jurisdiction, and making the aforesaid temporary restraining order and/or preliminary injunction **PERMANENT**; and

5. **DISMISS CA-G.R. No. 85959** on the ground of deliberate multiple forum shopping and take appropriate action relative thereto.

Other just and equitable reliefs are likewise prayed for.[15]

Nieto's Petition was first dismissed by this Court for lack of sufficient showing that the questioned judgment was tainted with grave abuse of discretion;[16] but acting favorably on Nieto's Motion for Reconsideration,[17] this Court reinstated his Petition and required herein private respondents to file their respective Comments.[18]

Africa filed his Comment,[19] asserting that the present Petition is simply a ruse for Nieto and his group to unlawfully wrest control of POTC and PHILCOMSAT from their legitimate stockholders, directors, and officers, and thus praying for the

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[15] *Id*. at 48-50.

[16] Resolution of the Second Division dated 9 March 2005. *Id*. at 339.

[17] *Id*. at 340-381.

[18] Resolution of the Second Division dated 10 October 2005. *Id*. at 466.

[19] *Id*. at 478-519.

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dismissal thereof. Nieto then filed his Reply[20] contending that Africa's Comment did not directly answer the pertinent issues and, instead, delved into collateral matters irrelevant to the Petition at bar and presented self-serving narrative and misrepresentations regarding the issues and controversies involving POTC and PHILCOMSAT.

In a Resolution, dated 10 July 2006, this Court required the parties to submit their respective Memorandum.[21] Nieto, through his counsel, Atty. Alobba, filed his Memorandum[22] on 17 October 2006, while Africa filed his Memorandum[23] on 19 October 2006.

On 21 November 2006, M.M. Lazaro and Associates entered its appearance as Nieto's counsel, in substitution of Atty. Alobba.[24] Three days later, on 24 November 2006, Nieto, through his new counsel, M.M. Lazaro and Associates, filed a Motion to Withdraw Petition,[25] manifesting that:

1. After meeting to discuss their differences and misgivings, petitioner [Nieto] and other stockholders deemed it best to settle amicably the issues/disputes that prompted the filing of the Petition in the above-entitled case;

2. Under the settlement, petitioner [Nieto] and other stockholders have agreed to hold stockholders meetings of the Philippine Overseas Telecommunications Corporation (POTC) and the Philippine Communications Satellite Corporation (PHILCOMSAT) to exercise the stockholders' rights during the meetings to be held by electing a common slate of directors they have chosen for a lasting, peaceful and efficient management and operations of the said corporations for the benefit of stockholders and not for strangers and interlopers in the corporation;

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[20] *Id.* at 665-695.

[21] *Id.* at 740-741.

[22] *Id.* at 749-801.

[23] *Id.* at 863-921.

[24] *Id.* at 923-924.

[25] *Id.* at 926-927.

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3. With the amicable settlement of the disputes and/or issues that sired the filing of the instant petition, there is no more dispute or controversy to be resolved or adjudicated by this Honorable Court. All issues presented by movant has been satisfactorily settled and, therefore, the petition would now be moot and academic.

4. To implement the settlement forged by the petitioner [Nieto] and other stockholders, petitioner agrees to voluntarily withdraw any and all cases he had earlier filed in various courts and offices. Hence, the petitioner-movant [Nieto] hereby withdraws the instant petition to implement the amicable settlement forged for the peace and the enjoyment of the stockholders.

P R A Y E R

WHEREFORE, premises considered, it is respectfully prayed of this Honorable Court that the instant Petition be considered withdrawn and/or dismissed for the reasons adverted to.

In his Comment[26] on the afore-quoted motion, Africa confirmed that the reasons stated therein for withdrawal of the petition are in accordance with the agreement between Nieto, on one hand, and Africa and the people the latter represents, on the other. Inasmuch as the withdrawal of the petition shall pave the way for the settlement of the feud among all the parties concerned, Africa has no objection to the withdrawal of the petition and joins Nieto in praying for the immediate dismissal of the same.

Even before this Court could act upon Nieto's Motion to Withdraw Petition, Nieto's former counsel, Atty. Alobba, filed on 13 December 2006 a Motion for Leave to Intervene,[27] with the attached Petition-in-Intervention.[28] She asserts that she has a legal interest in the instant Petition since she was impleaded as one of the private respondents in CA-G.R. SP No. 85959, in her capacity as the alleged Assistant Corporate Secretary of

[26] *Id.* at 985-986.

[27] *Id.* at 931-937.

[28] *Id.* at 938-983.

POTC and PHILCOMSAT. Her Petition-in-Intervention substantially adopts the issues raised and arguments presented in Nieto's Petition.

Both Nieto[29] and Africa[30] opposed the intervention of Atty. Alobba in the present case. Both argue that Atty. Alobba had slept on her rights when she failed to avail herself of any remedy to assail the Resolutions, dated 25 October 2004 and 13 December 2004, of the Court of Appeals in CA-G.R. SP No. 85959. Her only participation in the instant Petition is as the legal counsel of petitioner Nieto. She cannot now intervene in her personal capacity when her client, Nieto, has already chosen to withdraw his Petition. Atty. Alobba would be, in effect, serving conflicting interests for which she should be accordingly disciplined by this Court. Further, intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant to enable him to protect or preserve a right or interest which may be affected by such proceedings. It is thus not available to an original party in the proceedings such as Atty. Alobba. And finally, a motion to intervene must be filed at any time before rendition of judgment by the trial court, unless it is shown that the person intervening in the appeal is an indispensable party. Atty. Alobba does not qualify as an indispensable party and her interest herein, as the purported Assistant Secretary of POTC and PHILCOMSAT, is only indirect and mediate.

Atty. Alobba, commenting[31] on the opposition to her intervention in the present case, maintains that Nieto's Motion to Withdraw Petition was belatedly filed since the parties had already submitted their Memoranda; that she filed her Motion for Leave to Intervene as one of the respondents in CA-G.R. SP No. 85959 before the Court of Appeals; and that she seeks to intervene herein in order to give this Court the opportunity to finally resolve the important and substantive issues raised in the present Petition, to wit:

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[29] Comment on the Leave to Intervene and Petition-in-Intervention of Atty. Alobba. *Id*. at 1073-1078.

[30] Opposition (to Motion for Leave to Intervene). *Id*. at 990-999.

[31] *Id*. at 1001-1010.

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violation of due process, commission of forum shopping and determination of the jurisdiction of the SEC.

Now, for resolution of this Court are the following interrelated issues: (1) whether to grant Nieto's Motion to Withdraw Petition; and (2) whether to grant Atty. Alobba's Motion for Leave to Intervene and give due course to her Petition-in-Intervention in the present case.

Evidently, Atty. Alobba seeks to intervene herein to keep G.R. No. 166984 pending until finally resolved by this Court; and thwart the attempt of Nieto, with the consent of Africa, to withdraw the original Petition and have the said case dismissed entirely.

Rule 19 of the Rules of Court allows a person to intervene in a civil case under the following circumstances:

> SECTION 1. *Who may intervene.* – A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

The nature of intervention proceedings had been clearly and comprehensively defined by this Court in *Garcia v. David*,[32] to wit:

> Intervention is a proceeding in a suit or action by which a third person is permitted by the court to make himself a party, either joining plaintiff in claiming what is sought by the complaint, or uniting with defendant in resisting the claims of plaintiff, or demanding something adversely to both of them; the act or proceeding by which a third person becomes a party in a suit pending between others; the admission, by leave of court, of a person not an original party to pending legal proceedings, by which such person becomes a party

[32] 67 Phil. 279, 282-283 (1939).

thereto for the protection of some right or interest alleged by him to be affected by such proceedings. (33 C.J., 477.) Fundamentally, therefore, intervention is never an independent action, but is ancillary and supplemental to the existing litigation. Its purpose is not to obstruct nor unnecessarily delay the placid operation of the machinery of trial, but merely to afford one not an original party, yet having a certain right or interest in the pending case, the opportunity to appear and be joined so he could assert or protect such right or interest. The law on intervention in this jurisdiction, is found in Section 121 of the Code of Civil Procedure, which is a verbatim copy of Section 387 of the Code of Civil Procedure of the State of California. x x x:

xxx xxx xxx

A cursory examination of the above provision will show three important elements: (1) That only a person having a legal interest in the subject matter of the litigation or in the success of either of the parties or an interest against both, may intervene; (2) that therefore a mere intruder or stranger who has no legal interest and whose presence would only make the proceeding complicated, expensive and interminable may not be allowed to intervene; (3) that the permissive tenor of the legal provision evinces the intention of the lawmaker to give to the judge, considering a motion for intervention, the full measure of discretion in permitting or disallowing said motion.

Applying herein the relevant rules and jurisprudence, this Court finds no basis for granting Atty. Alobba's Motion for Leave to Intervene and for giving due course to her Petition-in-Intervention.

First, Atty. Alobba is **not a third person** seeking to intervene in the present case. By her own admission, Atty. Alobba was an **original party** in CA-G.R. SP No. 85959, Africa's Petition for *Certiorari* before the Court of Appeals. Atty. Alobba was named as one of the private respondents in CA-G.R. SP No. 85959 in her capacity as the purported Assistant Corporate Secretary of POTC and PHILCOMSAT. She had personally participated in the proceedings before the Court of Appeals, having filed pleadings therein as the counsel for Nieto, Atty. Lokin, and herself.

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It should be recalled that the subject of the instant Petition for *Certiorari* are the Resolutions, dated 25 October 2004 and 13 December 2004, of the Court of Appeals in CA-G.R. SP No. 85959. In the said Resolutions, the Court of Appeals refused to dismiss CA-G.R. SP No. 85959 after finding that Africa did not commit forum-shopping in filing the same; and issued a writ of preliminary injunction against therein public and private respondents and their agents, enjoining them from executing, enforcing, and implementing the Orders dated 8 July 2004, 26 July 2004, and 20 August 2004 of the SEC in SEC Case No. 12-03-03.

Only Nieto filed a Petition for *Certiorari*, now before this Court, challenging the Resolutions, dated 25 October 2004 and 13 December 2004, of the Court of Appeals in CA-G.R. SP No. 85959 for having been issued with grave abuse of discretion and in violation of his constitutional rights. Attys. Lokin and Alobba failed to avail themselves of any remedies from the Court of Appeals Resolutions, dated 25 October 2004 and 13 December 2004.

Atty. Alobba's participation in the present Petition (prior to her substitution) was nothing more than as counsel for Nieto. She signed the pleadings on behalf of her client Nieto, and there was absolutely no showing that she had done so in representation of herself or in her personal capacity. Her filing of a motion to intervene and a Petition-in-Intervention only cements this Court's finding that she did not personally join Nieto in instituting the original Petition herein.

Atty. Alobba cannot use intervention as a substitute for her lost remedy of *certiorari*. As this Court noted previously, she had actively participated in the proceedings before the Court of Appeals in CA-G.R. SP No. 85959 in representation of herself and her clients Nieto and Atty. Lokin. She does not deny receiving copies of the Court of Appeals Resolutions, dated 25 October 2004 and 13 December 2004. She had filed the instant Petition for *Certiorari*, challenging the said Court of Appeals Resolutions, as Nieto's counsel. Atty. Alloba thus cannot claim ignorance of CA-G.R. SP No. 85959 or Nieto's Petition before this Court.

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Atty. Alobba did not present, nor can this Court find on its own, any cogent reason or excuse for Atty. Alobba's failure to join Nieto as a co-petitioner in the Petition at bar or to timely file her own Petition.

Since Atty. Alobba did not timely seek any relief from the Resolutions, dated 25 October 2004 and 13 December 2004, of the Court of Appeals in CA-G.R. SP No. 85959, then the said Resolutions are therefore already considered **final and executory** as to her.[33] By her inaction, she is deemed to have accepted, and is thus already bound by the findings and directives of the Court of Appeals in the said Resolutions. To allow her to intervene now would be to sanction her obvious attempt to evade the finality of the Court of Appeals Resolutions as to her.

Second, Atty. Alobba also failed to convince this Court that she has legal interest in the subject matter of the litigation. The legal interest required for an intervention must be actual and material, direct and immediate, and not simply contingent or expectant. It has been held "that the interest which entitles a person to intervene in a suit between other parties must be in the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment."[34]

The original controversy in SEC Case No. 12-03-03, from which this Petition arose, involves the holding of the annual stockholders' meeting and election of the members of the Board of Directors of PHC, which can only take place after its parent companies, POTC and PHILCOMSAT, hold their own annual stockholders' meeting and election of the members of their respective Boards of Directors. Atty. Alobba was included as a private respondent in CA-G.R. SP No. 85959 as the alleged Assistant Corporate Secretary of POTC and PHILCOMSAT.

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[33] *Heirs of Antonio Pael v. Court of Appeals*, 382 Phil. 222, 244 (2000); *Firestone Tire and Rubber Company of the Philippines v. Tempongko*, 137 Phil. 239, 244 (1969); Singh *v. Liberty Insurance Corp.*, 118 Phil. 532, 535 (1963); *Amor v. Jugo*, 77 Phil. 703, 706 (1946).

[34] *Garcia v. David, supra*. note 32 at 284.

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Irrefragably, she was made a party in her capacity as an officer of the said corporations.

Atty. Alobba must remember that she has no personal stake in POTC and PHILCOMSAT. She became an officer thereof by virtue of the appointment by the Board of Directors of the said corporations. However, the very composition and authority of the Board of Directors that appointed her was being questioned; and to settle the matter, Nieto, Africa, and all other shareholders in the corporations have agreed to hold meetings among themselves. Hence, Atty. Alobba cannot claim an actual and direct interest in POTC, PHILCOMSAT, and PHC since her only interest therein is contingent upon her appointment as Assistant Corporate Secretary by the members of the Board of Directors of the said corporations, which in turn, must be duly elected by the shareholders thereof.

Third, apparently, for some unexplained reason, Atty. Alobba wants to keep the case pending before this Court. Having been replaced and having lost her personality to appear before this Court as Nieto's counsel, she now tries to intervene in her personal capacity, taking a position which is blatantly opposed to that of her former client, Nieto, who is now seeking the withdrawal of his Petition. This Court thus exercises its discretion to deny the intervention when the same is for the purpose of delaying the proceedings and making it only more complicated and expensive.

The parties to the original Petition, Nieto and Africa, together with the other stockholders of POTC, PHILCOMSAT, and PHC, had agreed among themselves to settle the controversies regarding the annual stockholders' meeting and the election of the members of the Board of Directors in the said corporations. Indeed, it is a sound policy for the Court to favor and encourage litigants to settle their controversies extra-judicially where the same is possible and lawful, not only because it minimizes the expenses and troubles a litigation usually entails, but also due to the fact

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that in most cases, such agreement redounds to the benefit of both parties and results in their mutual satisfaction.[35]

It may do well for Atty. Alobba to remember that intervention is only ancillary and supplementary to the existing litigation. Since the parties to the existing litigation are already seeking an end thereto, Atty. Alobba cannot be permitted to use her Petition-in-Intervention to replace the original Petition sought to be withdrawn and, in effect, keep the litigation going. That this is her intention becomes manifest after a perusal of her Petition-in-Intervention which substantially adopts and extensively quotes from Nieto's original Petition.

And finally, the fact that the case has been submitted for resolution will not preclude the parties from amicably settling their differences, and this Court from dismissing the case based thereon upon proper motion by the parties.[36] Submission of the case for resolution is the stage in the proceedings when the parties are already deemed to have presented before the Court all the issues, arguments, and evidence in support of their respective positions; and any issue, argument, or evidence presented thereafter may no longer be entertained by the Court. However, the Court, at this point, has no resolution or decision yet on the case, and the same is still far from being closed and terminated. The Court still maintains its jurisdiction over the case and may still accordingly act upon subsequent developments therein brought to its attention, such as the amicable settlement of the dispute by the parties.

This Court finds it interesting that Atty. Alobba would contend that it is already too late for Nieto to withdraw his Petition at this point, yet she seeks to intervene herein **after** Nieto filed, through his new counsel, his Motion to Withdraw Petition. If it is true that this Court can no longer entertain Nieto's Motion to Withdraw Petition at this stage, then it is equally true that it is also already deprived of authority to act on her motion to

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[35] *Philippine National Bank v. De la Cruz*, 103 Phil. 341, 344 (1958).

[36] *Briones, Jr. v. Court of Appeals*, 172 Phil. 451, 456 (1978); *Manubay v. De Guzman*, 122 Phil. 282, 284 (1965).

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intervene and Petition-in-Intervention filed much later. If there is anyone guilty of belatedly acting on his/her rights, it is no one else but Atty. Alobba.

This Court, however, refrains from any action on Africa's assertion that Atty. Alobba be disciplined by this Court for advancing an interest in conflict with that of her former client, Nieto. Any misconduct on the part of Atty. Alobba in relation to this case must be determined separately in the appropriate administrative proceedings which may be filed against her.

With the express consent of Africa and in the absence of any other valid opposition thereto, this Court allows Nieto to withdraw his Petition in light of the amicable settlement by the parties of the controversy subject of said Petition.

WHEREFORE, premises considered, this Court *RESOLVES* to:

1. *DENY* the Motion for Leave to Intervene and *DISMISS* the Petition-in-Intervention filed by Atty. Alma Kristina O. Alobba; and

2. *GRANT* the Motion to Withdraw Petition filed by petitioner Manuel H. Nieto, Jr. with the conformity of private respondent, Victor A. Africa, and *DISMISS* the present Petition for *Certiorari*.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, and *Nachura, JJ.,* concur.