

Court of Appeals Restrains SEC on Ongpin Case

The Court of Appeals, acting on the petition of Roberto V. Ongpin, has issued a restraining order to the SEC from enforcing its en banc decision on the 2009 Philex insider trading case.

In its ruling, the Court of Appeals said:

“The petition raised substantial issues on what acts are punishable as insider trading as well as the question on prescription of the administrative charge.

Gauging from the complexity of the matters at hand and seeing that the circumstances in this case present an urgent and paramount necessity to prevent serious damage upon petitioner Ongpin since the assailed Decision of the SEC en banc may, at any time, be implemented pursuant to Section 12 of Rule 43 of the Rules of Court, we resolve to grant the prayer for the issuance of a temporary restraining order.

In so ruling, we considered not the amount of fine imposed upon Ongpin but the penalty of disqualification and the order for him to relinquish or resign from the positions of director or officer, the extent of which affects not only the company PHILEX, but all other public and publicly listed corporations.

The damage to be suffered, if any, is not quantifiable in terms of monetary value and cannot be remedied under any standard compensation.”

In its restraining order, the Court of Appeals set the hearing for August 23 and 24, 2016. The law firm of Atty. Estelito P. Mendoza has entered its appearance as collaborating counsel on behalf of Ongpin.

A copy of the Court of Appeals order is attached herewith.

-o0o-

**REPUBLIC OF THE PHILIPPINES
COURT OF APPEALS
MANILA**

ROBERTO V. ONGPIN,
Petitioner,

-versus-

CA-G.R. SP. NO. 146704

**ENFORCEMENT AND
INVESTOR PROTECTION
DEPARTMENT of the Securities
and Exchange Commission,**
Respondent.

August 1, 2016

X-----X

NOTICE OF RESOLUTION

S I R :

Please take notice that on **August 1, 2016** a RESOLUTION copy hereto attached was rendered by the **THIRTEENTH (13th) DIVISION** of this Court of Appeals, the original copy of which is on file with this office.

Very truly yours,


ABIGAIL S. DOMINGO-LAYLO
Division Clerk of Court

COPY FURNISHED:

SECURITIES AND EXCHANGE COMMISSION EN BANC – personal
Securities and Exchange Commission
SEC Bldg., EDSA Greenhills
1550 Mandaluyong City

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT – personal
(respondent)
Securities and Exchange Commission
SEC Bldg., EDSA Greenhills
1550 Mandaluyong City

PONFERRADA ORBE AND ALTUBAR LAW OFFICES – personal
(counsel for petitioner)
The Penthouse, Alphaland Southgate Tower
2258 Don Chino Roces Ave. cor. EDSA
1200 Makati City



Republic of the Philippines
Court of Appeals
Manila

THIRTEENTH DIVISION

ROBERTO V. ONGPIN,
Petitioner,

CA-G.R. SP No. 146704

Members:

- versus -

PIZARRO, N.B., *Chairperson,*
GAERLAN, S.H., *and*
QUIJANO-PADILLA, M.L.C., *JJ.:*

ENFORCEMENT AND
INVESTOR PROTECTION
DEPARTMENT of the
Securities and Exchange
Commission,

Promulgated:

01 AUG 2016

Respondent.

11:10 am

RESOLUTION

QUIJANO-PADILLA, J.:

This resolves the prayer for the issuance of a temporary restraining order contained in the Petition for Review¹ under Rule 43 of the Rules of Court filed by petitioner Roberto V. Ongpin.

The petition assails the Decision² dated July 8, 2016 issued by the Securities and Exchange Commission en banc (*SEC en banc*), which affirmed albeit modified the Order dated March 10, 2015 of respondent Enforcement and Investor Protection Department (*EIPD*) of the SEC, finding petitioner Roberto V. Ongpin (*Ongpin*) liable for violating Section 27.1 of the Securities Regulation Code³ (*SRC*).

The dispositive portion of the assailed Decision reads:⁴

1 Filed on July 22, 2016, Rollo, pp. 3-30.

2 *Id.* at pp. 31-52.

3 Republic Act No. 8799.

4 See Note 2, at pp. 51-52.

WHEREFORE, premises considered, the Order of the Enforcement and Investor Protection Department dated 10 March 2015 is hereby **MODIFIED**. Appellant Roberto V. Ongpin is now hereby ordered to pay the fine of ONE HUNDRED SEVENTY FOUR MILLION PESOS (Php 174,000,000.00), pursuant to Section 54.1 (ii) of Republic Act No. 8799, otherwise known as the Securities Regulation Code (SRC), for the purchase in 174 transactions of PHILEX shares on 2 December 2009 as an insider while in possession of non-public material information in violation of Section 27.1 thereof. Further, appellant is hereby **DISQUALIFIED**, pursuant to Section 54.1 (iii) of the SRC, in relation to Section 17.2 thereof, from being an officer, member of the board of directors, or person performing similar functions, of a public company or a publicly listed company. Lastly, appellant is ordered to **RELINQUISH** and/or **RESIGN** from any and all positions he is presently holding as officer, member of the Board of Directors, or to which he is performing any similar functions, of a public company or publicly listed company.

The imposition of the foregoing penalties is WITHOUT PREJUDICE to further investigation and the imposition of additional penalties by the Commission, for any additional purchases of the unaccounted 17,982,250 PHILEX shares on the morning of 2 December 2009 by appellant.

Let a copy of this Decision be furnished to the Markets and Securities Regulation Department for its appropriate action.

SO ORDERED.

In filing this present petition, Ongpin alleges that he started the acquisition of PHILEX shares in May 2007, initially at 16,773,460 shares, with the objective of disposing these later for profit. He was subsequently elected to the Board of Directors of PHILEX on June 26, 2007 and held said position, serving as Vice Chairman and Chairman of the Executive Committee of the company until December 7, 2009. By year 2009, his shareholdings increased to 367,774,886 shares after he gradually acquired more shares, both directly and through various companies of which he is the beneficial owner, including Goldenmedia Corporation (*Goldenmedia*).

Ongpin stated as early as the last quarter of 2008, there have already been talks, both in the Philippine Stock Exchange (PSE) and in print media that investors are negotiating for the sale of PHILEX treasury shares which then comprised of 20% of the corporation's

issued shares.

Come November 28, 2008, PSE was informed by PHILEX that it had already sold 778,620,792 treasury shares in favor of the Hong Kong-based investment holding company, First Pacific Company Ltd. (*First Pacific*), where Manny V. Pangilinan (*MVP*) acts as both Managing Director and Chief Executive Officer.

Bent on attaining its publicly announced goal of acquiring 40% stake to be able to gain control of PHILEX, First Pacific eventually increased its holdings to 31.5%. Ongpin submits that by then any reasonable investor would know that First Pacific still needs to acquire 9% more of the corporation's total issued shares to hold 40% stake in PHILEX.

In November 2009, First Pacific approached Ongpin about the possibility of buying the latter's stake at PHILEX, which then already accounts for 6.5% of the company.

No deal was reached over the succeeding days. Come December 1, 2009 First Pacific made a tentative offer for the price of Php21.00 per share. Nevertheless, Ongpin maintains that there was yet no final and binding agreement regarding several matters, including: the number of shares to be sold; the manner and timing of payment; and the manner and timing of delivery of the shares.

In the morning of December 2, 2009, Ongpin, using his company Goldenmedia acquired 45,964,500 more of PHILEX shares at the stock market at the price of Php19.25 to Php19.50 per share.

In the evening of that same date, December 2, 2009, First Pacific and Ongpin sealed their deal for sale of the latter's shares in favor of the former. The stake held by Ongpin and Goldenmedia, along with that of four (4) other sellers, enabled First Pacific to finally acquire 40.7% of PHILEX, hence, gained effective control of the corporation.

On November 12, 2014, respondent EIPD issued a show cause order to Ongpin to explain why no administrative sanctions should be imposed upon him for violating his fiduciary duty as director of PHILEX and for committing insider trading, which is prohibited under Section 27.1 of the SRC.

Ongpin filed his Answer⁵ dated November 28, 2014.

On March 10, 2015, the EIPD handed down an Order⁶ finding Ongpin liable for insider trading. He was penalized to pay a Php17.4-million peso fine and was made to relinquish and/or resign from all positions he was presently holding as officer and member of the board of directors.

Ongpin appealed the adverse ruling to the SEC en banc, but the latter upheld the EIPD's order in the assailed Decision, hence this Petition.

Seeking the issuance of a temporary restraining order, Ongpin argues that he did not commit insider trading and that the action to hold him administratively liable has already prescribed, invoking Section 62.2 of the SRC, which states that: "No action shall be maintained to enforce any liability created under any other provision of this Code unless brought within two (2) years after the discovery of the facts constituting the cause of action and within five (5) years after such cause of action accrued."

He likewise claims that this matter is one of extreme urgency since an appeal of the assailed Decision does not stay the implementation of the award, judgment, final order or resolution sought to reviewed as provided in Section 12 of Rule 43 of the Rules of Court and he stands to suffer irreparable damage because his disqualification from acting as director and officer in any public or publicly listed company creates a negative impact on his reputation as a businessman, which damage is not quantifiable and compensable.

RULING:

The petition raised substantial issues on what acts are punishable as insider trading as well as the question on prescription of the administrative charge.

Gauging from the complexity of the matters at hand and seeing that the circumstances in this case present an urgent and

⁵ *Id.*, pp. 53-82.

⁶ *Id.*, pp. 142-166.

paramount necessity to prevent serious damage upon petitioner Ongpin since the assailed Decision of the SEC en banc may, at any time, be implemented pursuant to Section 12 of Rule 43 of the Rules of Court, we resolve to grant the prayer for the issuance of a temporary restraining order.

In so ruling, we considered not the amount of fine imposed upon Ongpin but the penalty of disqualification and the order for him to relinquish or resign from the positions of director or officer, the extent of which affects not only the company PHILEX, but all other public and publicly listed corporations.

The damage to be suffered, if any, is not quantifiable in terms of monetary value and cannot be remedied under any standard compensation.

We wish to underscore that the purpose of the temporary injunctive relief is to preserve the *status quo ante* between the parties, and so as not to render moot and academic the relief prayed for in the Petition.

WHEREFORE, premises considered, petitioner's prayer for the issuance of a temporary restraining order is **GRANTED**.

Accordingly, respondent is hereby **ENJOINED** from enforcing or implementing the Decision dated July 8, 2016 of the Securities and Exchange Commission en banc for a period sixty (60) days upon filing and approval of a bond in the amount of One Million Pesos (Php1,000,000.00).

Meanwhile, set this case for hearing to determine the propriety of issuance of a **writ of preliminary injunction** on **August 23 and 24, 2016 at 2:00 p.m.** to be held at Paras Hall, 2nd Floor, Main Building, Court of Appeals, Manila.

SO ORDERED.

ORIGINAL SIGNED

MA. LUISA C. QUIJANO-PADILLA
Associate Justice

CERTIFIED TRUE COPY

ABIGAIL S. DOMINGO-LAYLO
Division Clerk of Court

WE CONCUR:

ORIGINAL SIGNED
NORMANDIE B. PIZARRO
Associate Justice

ORIGINAL SIGNED
SAMUEL H. GAERLAN
Associate Justice

CERTIFIED TRUE COPY,

ABIGAIL S. DOMINGO-LAYLO
Division Clerk of Court