

FILED**MAY 09 2006****CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MERRILL LYNCH, PIERCE, FENNER AND SMITH, INCORPORATED, a corporation organized and existing under the laws of the State of Delaware with its principal place of business in New York, New York,

Plaintiff - Appellee,

v.

ENC CORPORATION; SUNTRUST INVESTMENT CO., S.A., a corporation organized and existing under the laws of Switzerland with an address at rue de Jargonnant 2, P.O. Box 76, 1211 Geneva 6, Switzerland; JOHN K. BURNS, a citizen of the United States, with an address at 300 Wacker Drive, Suite, 900, Chicago, Illinois, 60606; THE ESTATE OF FERDINAND E. MARCOS; IMELDA R. MARCOS; FERDINAND R. MARCOS, JR.; MARIA IMELDA MARCOS; IRENE MARCOS ARANETA; FRONTIER RISK CAPITAL MANAGEMENT, L.C.C., a limited liability company organized and existing under the laws of the States of Nevada, with a registered office at 6100 Neil Road, Suite 500, Reno, NV. 89511 and an address at 300 Wacker Drive, Suite 900, Chicago, IL 60606; GROSVENOR

No. 04-16401

D.C. No. CV-00-00595-MLR

**ORDER AMENDING
OPINION**

CAPITAL LTD., a company organized and existing under the law of the United Kingdom, with an address at Grosvenor Gardens House, Suite 117, 35-37 Grosvenor Gardens, London SW1 W OBS, United Kingdom; THE ESTATE OF ROGER ROXAS; GOLDEN BUDHA CORPORATION, a corporation organized and existing under the laws of the State of Georgia, with a registered office at 710 West First Street, Blue Ridge, Georgia 30513, and a mailing address at 260 Carrollton St., Buchanan, GA 30113,

Defendants,

and,

ARELMA, INC., a corporation organized and existing under the laws of Panama with a permanent address at Ave. Justo Arosemena y Calle 41 Este, No. 40-59 Pte al Colegio Immaculada, Panama 1.Rep.de Panama, and a mailing address at c/o Suntrust Investment Co.S.A., ru de Jargonnant 2, P.O. Box 76, 1211 Geneva 6, Switzerland;;

Defendant - Appellant,

MARIANO J. PIMENTAL, on behalf of himself and all other persons similarly situated;;

Defendant - Appellee,

PHILIPPINE NATIONAL BANK,

Defendant - Appellant.

MERRILL LYNCH, PIERCE, FENNER AND SMITH, INCORPORATED, a corporation organized and existing under the laws of the State of Delaware with its principal place of business in New York, New York,

Plaintiff - Appellee,

v.

ENC CORPORATION; ARELMA, INC., a corporation organized and existing under the laws of Panama with a permanent address at Ave. Justo Arosemena y Calle 41 Este, No. 40-59 Pte al Colegio Immaculada, Panama 1.Rep.de Panama, and a mailing address at c/o Suntrust Investment Co.S.A., ru de Jargonnant 2, P.O. Box 76, 1211 Geneva 6, Switzerland; SUNTRUST INVESTMENT CO., S.A., a corporation organized and existing under the laws of Switzerland with an address at rue de Jargonnant 2, P.O. Box 76, 1211 Geneva 6, Switzerland; JOHN K. BURNS, a citizen of the United States, with an address at 300 Wacker Drive, Suite, 900, Chicago, Illinois, 60606; THE ESTATE OF FERDINAND E. MARCOS; IMELDA R. MARCOS; FERDINAND R. MARCOS, JR.; MARIA IMELDA MARCOS; IRENE MARCOS ARANETA; FRONTIER RISK CAPITAL MANAGEMENT, L.C.C., a limited liability company organized and existing

No. 04-16503

D.C. No. CV-00-00595-MLR

under the laws of the States of Nevada, with a registered office at 6100 Neil Road, Suite 500, Reno, NV. 89511 and an address at 300 Wacker Drive, Suite 900, Chicago, IL 60606; GROSVENOR CAPITAL LTD., a company organized and existing under the law of the United Kingdom, with an address at Grosvenor Gardens House, Suite 117, 35-37 Grosvenor Gardens, London SW1 W OBS, United Kingdom; THE ESTATE OF ROGER ROXAS; GOLDEN BUDHA CORPORATION, a corporation organized and existing under the laws of the State of Georgia, with a registered office at 710 West First Street, Blue Ridge, Georgia 30513, and a mailing address at 260 Carrollton St., Buchanan, GA 30113; PHILIPPINE NATIONAL BANK,

Defendants,

and,

MARIANO J. PIMENTAL, on behalf of himself and all other persons similarly situated;;

Defendant - Appellee,

REPUBLIC OF THE PHILIPPINES; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, a government agency of the Republic of the Philippines,

Defendants - Appellants.

MERRILL LYNCH, PIERCE, FENNER AND SMITH, INCORPORATED, a corporation organized and existing under the laws of the State of Delaware with its principal place of business in New York, New York,

Plaintiff - Appellee,

v.

ENC CORPORATION; ARELMA, INC., a corporation organized and existing under the laws of Panama with a permanent address at Ave. Justo Arosemena y Calle 41 Este, No. 40-59 Pte al Colegio Immaculada, Panama 1.Rep.de Panama, and a mailing address at c/o Suntrust Investment Co.S.A., ru de Jargonnant 2, P.O. Box 76, 1211 Geneva 6, Switzerland; SUNTRUST INVESTMENT CO., S.A., a corporation organized and existing under the laws of Switzerland with an address at rue de Jargonnant 2, P.O. Box 76, 1211 Geneva 6, Switzerland; JOHN K. BURNS, a citizen of the United States, with an address at 300 Wacker Drive, Suite, 900, Chicago, Illinois, 60606; THE ESTATE OF FERDINAND E. MARCOS; IMELDA R. MARCOS; FERDINAND R. MARCOS, JR.; MARIA IMELDA MARCOS; IRENE MARCOS ARANETA; FRONTIER RISK CAPITAL MANAGEMENT, L.C.C., a limited liability company organized and existing under the laws of the States of Nevada, with a registered office at 6100 Neil Road, Suite 500, Reno, NV. 89511 and an

No. 04-16538

D.C. No. CV-00-00595-MLR

address at 300 Wacker Drive, Suite 900, Chicago, IL 60606; GROSVENOR CAPITAL LTD., a company organized and existing under the law of the United Kingdom, with an address at Grosvenor Gardens House, Suite 117, 35-37 Grosvenor Gardens, London SW1 W OBS, United Kingdom; PHILIPPINE NATIONAL BANK; REPUBLIC OF THE PHILIPPINES; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, a government agency of the Republic of the Philippines,

Defendants,

and,

THE ESTATE OF ROGER ROXAS; GOLDEN BUDHA CORPORATION, a corporation organized and existing under the laws of the State of Georgia, with a registered office at 710 West First Street, Blue Ridge, Georgia 30513, and a mailing address at 260 Carrollton St., Buchanan, GA 30113;;

Defendants - Appellants,

MARIANO J. PIMENTAL, on behalf of himself and all other persons similarly situated,

Defendant - Appellee.

Appeal from the United States District Court
for the District of Hawaii

Manuel L. Real, District Judge, Presiding

Argued and Submitted March 14, 2005
San Francisco, California

Before: NOONAN, THOMAS, Circuit Judges, and ROBART*, District Judge.

The opinion filed on May 4, 2006, is amended as follows: on slip opinion page 5038, lines 29-32, the following sentence is deleted: “The phrase ‘equity and good conscience’ in our judicial usage is coterminous with the first opinions of the United States Supreme Court. *See Hollingsworth v. Ogle*, 1 U.S. 257 (1788).”

On slip opinion page 5038, line 29, the following sentence is added: “The phrase ‘equity and good conscience’ in our judicial usage is coterminous with the early opinions of the United States Supreme Court. *See Elmendorf v. Taylor*, 23 U.S. (10 Wheat.) 152, 181 (1825).”

* The Honorable James L. Robart, United States District Judge for the Western District of Washington, sitting by designation.