



REPUBLIC OF THE PHILIPPINES
SENATE ELECTORAL TRIBUNAL
COA-NCR Bldg., Batasan Road, Quezon City

FRANCIS N. TOLENTINO,
Protestant,

- versus -

SET CASE No. 001-16

LEILA M. DE LIMA,
Protestee.
X-----X

RESOLUTION NO. 16-26

On 27 December 2016, the Commission on Elections (COMELEC), through its Law Department, filed a *Manifestation*, praying in the main that Protestant Francis N. Tolentino be required to pay the amount of Three Million Three Hundred Fifteen Thousand Seven Hundred Eight Five Pesos and Thirty-Six Centavos (P3,315,785.36) as stated in Resolution No. 16-17 of the Tribunal dated 22 November 2016 to cover the cost of the machines and equipment being retained by the COMELEC in his favor.

On 09 January 2017, Protestant Tolentino filed thru counsel a *Comment on Manifestation and Motion*, praying that the COMELEC's Motion, disguised as a Manifestation, be denied for lack of merit. He alleged that the Motion filed by COMELEC is not only improper but has no legal basis for the following reasons:

1. The circumstances narrated in the Manifestation of the COMELEC shows that the COMELEC personnel were grossly negligent;
2. The basic principle of relativity of contracts can only bind the parties who entered into it and cannot favor or prejudice a third person, even if he is aware of such a contract and has acted with knowledge thereof;

3. In any case, the Contract of Lease between COMELEC and Smartmatic-TIM is a void contract; considering that under its terms, the COMELEC abdicated its constitutional duties to administer and enforce the rules and regulations relative to the conduct of an election, and delegating the same to a foreign-controlled entity, Smartmatic-TIM; and
4. Smartmatic-TIM is in no position to insist on a rigid and strict interpretation of the Contract of Lease, considering that Smartmatic itself is in breach of Art. 7.3 of the Contract of Lease, in that the System furnished by Smartmatic failed to meet the minimum system capabilities mandated by R.A. 8436, Sec.7.

CONSIDERING the allegations, issues and arguments raised by Protestant Tolentino in his *Comment on Manifestation and Motion*, the Executive Committee of the Tribunal Resolves to **REQUIRE** the Commission on Elections to file a **REPLY** to the said *Comment* within five (5) days from receipt of this Resolution.

SO ORDERED.

09 January 2017.



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Member



LUCAS P. BERSAMIN
Associate Justice
Member