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**EN BANC**

[G.R. No. 180705. November 27, 2012]

**EDUARDO M. COJUANGCO, JR.,** *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

**SYLLABUS**

**1. POLITICAL LAW; 1987 CONSTITUTION; ACCOUNTABILITY OF PUBLIC OFFICERS; SANDIGANBAYAN; HAS JURISDICTION OVER THE SUBJECT MATTER OF THE SUBDIVIDED AMENDED COMPLAINTS, INCLUDING THE SHARES ALLEGEDLY ACQUIRED BY PETITIONER BY VIRTUE OF THE PHILIPPINE COCONUT AUTHORITY (PCA) AGREEMENTS. — THE SANDIGANBAYAN HAS JURISDICTION OVER THE SUBJECT MATTER OF THE SUBDIVIDED AMENDED COMPLAINTS, INCLUDING THE SHARES ALLEGEDLY ACQUIRED BY COJUANGCO BY VIRTUE OF THE PCA AGREEMENTS.** The issue of jurisdiction over the subject matter of the subdivided amended complaints has peremptorily been put to rest by the Court in its January 24, 2012 Decision in *COCOFED v. Republic*. There, the Court, citing Regalado and settled jurisprudence, stressed the following interlocking precepts: Subject matter jurisdiction is conferred by law, not by the consent or acquiescence of any or all of the parties. In turn, the issue on whether a suit comes within the penumbra of a statutory conferment is determined by the allegations in the complaint, regardless of whether or not the suitor will be entitled to recover upon all or part of the claims asserted.

**2. ID.; ID.; POWER OF TAXATION; TAXES ARE IMPOSED ONLY FOR A PUBLIC PURPOSE, THEY MUST, THEREFORE, BE USED FOR THE BENEFIT OF THE PUBLIC AND NOT FOR THE EXCLUSIVE PROFIT OR GAIN OF PRIVATE PERSONS.—** As heretofore amply discussed, taxes are imposed only for a public purpose. They must, therefore, be used for the benefit of the public and not for the exclusive profit or gain of private persons. Otherwise, grave injustice is inflicted not only upon the Government but most especially upon the citizenry—the taxpayers—to whom We owe a great deal of

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accountability. In this case, out of the 72.2% FUB (now UCPB) shares of stocks PCA purchased using the coconut levy funds, the May 25, 1975 Agreement between the PCA and Cojuangco provided for the transfer to the latter, by way of compensation, of 10% of the shares subject of the agreement, or a total of 7.22% fully paid shares. In sum, Cojuangco received public assets – in the form of FUB (UCPB) shares with a value then of ten million eight hundred eighty-six thousand pesos (PhP 10,886,000) in 1975, paid by coconut levy funds. In effect, Cojuangco received the aforementioned asset as a result of the PCA-Cojuangco Agreement, and exclusively benefited himself by owning property acquired using solely public funds. Cojuangco, no less, admitted that the PCA paid, out of the CCSF, the entire acquisition price for the 72.2% option shares. This is in clear violation of the prohibition, which the Court seeks to uphold. We, therefore, affirm, on this ground, the decision of the Sandiganbayan nullifying the shares of stock transfer to Cojuangco. Accordingly, the UCPB shares of stock representing the 7.22% fully paid shares subject of the instant petition, with all dividends declared, paid or issued thereon, as well as any increments thereto arising from, but not limited to, the exercise of pre-emptive rights, shall be reconveyed to the Government of the Republic of the Philippines, which as We previously clarified, shall "be used only for the benefit of all coconut farmers and for the development of the coconut industry."

**3. ID.; ID.; ID.; PROVISIONS THAT CONVERT PUBLIC PROPERTY INTO PRIVATE FUNDS TO BE USED ULTIMATELY FOR PERSONAL BENEFIT SHOULD BE STRUCK DOWN AS UNCONSTITUTIONAL; THE COCONUT LEVY FUNDS WERE EXACTED FOR A SPECIAL PUBLIC PURPOSE, CONSEQUENTLY, ANY USE OR TRANSFER OF THE FUNDS THAT DIRECTLY BENEFIT PRIVATE INDIVIDUALS SHOULD BE INVALIDATED.—**The ensuing are the underlying rationale for declaring, as unconstitutional, provisions that convert public property into private funds to be used ultimately for personal benefit: … not only were the laws unconstitutional for decreeing the distribution of the shares of stock for free to the coconut farmers and therefore negating the public purposed declared by P.D. No.

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276, *i.e.*, to stabilize the price of edible oil and to protect the coconut industry. They likewise reclassified the coconut levy fund as *private fund*, to be owned by *private individuals* in their *private capacities*, contrary to the original purpose for the creation of such fund. To compound the situation, the offending provisions effectively removed the coconut levy fund away from the cavil of public funds which normally can be paid out only pursuant to an appropriation made by law. The conversion of public funds into private assets was illegally allowed, in fact mandated, by these provisions. Clearly therefore, the pertinent provisions of P.D. Nos. 755, 961 and 1468 are unconstitutional for violating Article VI, Section 29 (3) of the Constitution. In this context, the distribution by PCA of the UCPB shares purchased by means of the coconut levy fund – a special fund of the government – to the coconut farmers is, therefore, void. It is precisely for the foregoing that impels the Court to strike down as unconstitutional the provisions of the PCA-Cojuangco Agreement that allow petitioner Cojuangco to personally and exclusively own public funds or property, the disbursement of which We so greatly protect if only to give light and meaning to the mandates of the Constitution.

**4. CIVIL LAW; CIVIL CODE; EFFECT AND APPPICATION OF LAWS; THE AGREEMENT BETWEEN PCA AND PETITIONER DATED MAY 25, 1975 CANNOT BE ACCORDED THE STATUS OF LAW FOR THE LACK OF REQUISITE PUBLICATION; THE AGREEMENT SHALL BE TREATED AS AN ORDINARY TRANSACTION BETWEEN AGREEING MINDS TO BE GOVERNED BY CONTRACT LAW UNDER THE CIVIL CODE.—** Section 1 of P.D. No. 755 incorporated, by reference, the "Agreement for the Acquisition of a Commercial Bank for the Benefit of the Coconut Farmers" executed by the PCA. Particularly, Section 1 states: **Section 1.** *Declaration of National Policy.* It is hereby declared that the policy of the State is to provide readily available credit facilities to the coconut farmers at preferential rates; that this policy can be expeditiously and efficiently realized by the implementation of the **"Agreement for the Acquisition of a Commercial Bank for the benefit of the Coconut Farmers" executed**

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**by the Philippine Coconut Authority, the terms of which "Agreement" are hereby incorporated by reference;** and that the Philippine Coconut Authority is hereby authorized to distribute, for free, the shares of stock of the bank it acquired to the coconut farmers under such rules and regulations it may promulgate. It bears to stress at this point that the PCA-Cojuangco Agreement referred to above in Section 1 of P.D. 755 was not reproduced or attached as an annex to the same law. And it is well-settled that laws must be published to be valid. In fact, publication is an indispensable condition for the effectivity of a law. x x x The publication, as further held in *Tañada*, must be of the full text of the law since the purpose of publication is to inform the public of the contents of the law. Mere referencing the number of the presidential decree, its title or whereabouts and its supposed date of effectivity would not satisfy the publication requirement. In this case, while it incorporated the PCA-Cojuangco Agreement by reference, Section 1 of P.D. 755 did not in any way reproduce the exact terms of the contract in the decree. Neither was a copy thereof attached to the decree when published. We cannot, therefore, extend to the said Agreement the status of a law. Consequently, We join the Sandiganbayan in its holding that the PCA-Cojuangco Agreement shall be treated as an ordinary transaction between agreeing minds to be governed by contract law under the Civil Code.

**5. ID.; ID.; CONTRACTS; REQUISITES OF A VALID CONTRACT; CAUSE OR CONSIDERATION; IT IS PRESUMED THAT A CONTRACT HAS SUFFICIENT CONSIDERATION UNLESS THE CONTRARY IS PROVEN; THE PRESUMPTION CONTEXTUALLY OPERATES IN FAVOR OF PETITIONER AND AGAINST THE REPUBLIC, AS PLAINTIFF *A QUO*, WHICH THEN HAD THE BURDEN TO PROVE THAT INDEED THERE WAS NO SUFFICIENT CONSIDERATION FOR THE SECOND AGREEMENT.—** After a circumspect study, the Court finds as inconclusive the evidence relied upon by Sandiganbayan to support its ruling that the PCA-Cojuangco Agreement is devoid of sufficient consideration. We shall explain. Rule 131, Section 3(r) of the Rules of Court states: Sec.3. *Disputable*

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*presumptions*.—The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence: x x x (r) That there was a sufficient consideration for a contract; The Court had the occasion to explain the reach of the above provision in *Surtida v. Rural Bank of Malinao (Albay), Inc.*, to wit: x x x **The presumption that a contract has sufficient consideration cannot be overthrown by the bare uncorroborated and self-serving assertion** of petitioners **that it has no consideration. To overcome the presumption** of consideration**, the alleged lack of consideration must be shown by preponderance of evidence.** Petitioners failed to discharge this burden x x x. The rule then is that the party who stands to profit from a declaration of the nullity of a contract on the ground of insufficiency of consideration—which would necessarily refer to one who asserts such nullity–-has the burden of overthrowing the presumption offered by the aforequoted Section 3(r). Obviously then, the presumption contextually operates in favor of Cojuangco and against the Republic, as plaintiff *a quo*, which then had the burden to prove that indeed there was no sufficient consideration for the Second Agreement. The Sandiganbayan's stated observation, therefore, that based on the wordings of the Second Agreement, Cojuangco had no personal and exclusive option to purchase the FUB shares from Pedro Cojuangco had really little to commend itself for acceptance. This, as opposed to the fact that such sale and purchase agreement is memorialized in a notarized document whereby both Eduardo Cojuangco, Jr. and Pedro Cojuangco attested to the correctness of the provisions thereof, among which was that Eduardo had such option to purchase. A notarized document, *Lazaro v. Agustin* teaches, "generally carries the evidentiary weight conferred upon it with respect to its due execution, and documents acknowledged before a notary public have in their favor the disputable presumption of regularity."

**6. ID.; ID.; ID.; ID.; ID.; THE EXPRESS AND POSITIVE DECLARATION BY THE PARTIES OF THE PRESENCE OF ADEQUATE CONSIDERATION IN THE CONTRACT MAKES CONCLUSIVE THE PRESUMPTION OF SUFFICIENT CONSIDERATION IN THE PCA AGREEMENT.—** In *Samanilla v. Cajucom*, the Court clarified that the presumption of a valid

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consideration cannot be discarded on a simple claim of absence of consideration, especially when the contract itself states that consideration was given: x x x **This presumption appellants cannot overcome by a simple assertion of lack of consideration. Especially may not the presumption be so lightly set aside when the contract itself states that consideration was given, and the same has been reduced into a public instrument will all due formalities and solemnities as in this case.** A perusal of the PCA-Cojuangco Agreement disclosed an express statement of consideration for the transaction: **x x x** **As compensation for exercising his personal and exclusive option to acquire the Option Shares and for transferring such shares to the coconut farmers, as well as for performing the management services required of him,** SELLER shall receive equity in the Bank amounting, in the aggregate, to 95,304 fully paid shares in accordance with the procedure set forth in paragraph 6 below. Applying *Samanilla* to the case at bar, the express and positive declaration by the parties of the presence of adequate consideration in the contract makes conclusive the presumption of sufficient consideration in the PCA Agreement. Moreover, the option to purchase shares and management services for UCPB was already availed of by petitioner Cojuangco for the benefit of the PCA. The exercise of such right resulted in the execution of the PC-ECJ Agreement, which fact is not disputed. The document itself is incontrovertible proof and hard evidence that petitioner Cojuangco had the right to purchase the subject FUB (now UCPB) shares. *Res ipsa loquitur*.

**7. ID.; ID.; ID.; ID.; INADEQUACY OF THE CONSIDERATION DOES NOT RENDER A CONTRACT VOID.—** The Sandiganbayan, however, pointed to the perceived "lack of any pecuniary value or advantage to the government of the said option, which could compensate for the generous payment to him by PCA of valuable shares of stock, as stipulated in the May 25, 1975 Agreement between him and the PCA." Inadequacy of the consideration, however, does not render a contract void under Article 1355 of the Civil Code: Art. 1355. Except in cases specified by law, lesion **or inadequacy of cause shall not invalidate a contract**, unless there has been fraud, mistake or undue influence. *Alsua-Betts v. Court of Appeals* is instructive that lack of ample consideration does not nullify the contract:

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**Inadequacy of consideration does not vitiate a contract unless it is proven which in the case at bar was not, that there was fraud, mistake or undue influence.** (Article 1355, New Civil Code). We do not find the stipulated price as so inadequate to shock the court's conscience, considering that the price paid was much higher than the assessed value of the subject properties and considering that the sales were effected by a father to her daughter in which case filial love must be taken into account.

8. **ID.; ID.; ID.; ID.; ID.; WHILE CONSIDERATION IS USUALLY IN THE FORM OF MONEY OR PROPERTY, IT NEED NOT BE MONETARY.—** While consideration is usually in the form of money or property, it need not be monetary. This is clear from Article 1350 which reads: Art. 1350. In onerous contracts the cause is understood to be, for each contracting party, **the prestation or promise of a thing or service by the other;** in remuneratory ones, the **service or benefit which is remunerated;** and in contracts of pure beneficence, the mere liability of the benefactor. *Gabriel v. Monte de Piedad y Caja de Ahorros* tells us of the meaning of consideration: x x x A consideration, in the legal sense of the word, is some **right, interest, benefit, or advantage** conferred upon the promisor, to which he is otherwise not lawfully entitled, **or any detriment, prejudice, loss, or disadvantage** suffered or undertaken by the promisee other than to such as he is at the time of consent bound to suffer. The Court rules that the transfer of the subject UCPB shares is clearly supported by valuable consideration.

9. **ID.; ID.; ID.; ID.; ID.; WHILE THE PCA-COJUANGCO AGREEMENT PUTS PCA AND THE COCONUT FARMERS AT A DISADVANTAGE, THE FACTS DO NOT MAKE OUT A CLEAR CASE OF VIOLATION OF ANY LAW THAT WILL NECESSITATE THE RECALL OF SAID CONTRACT.—** While one may posit that the PCA-Cojuangco Agreement puts PCA and the coconut farmers at a disadvantage, the facts do not make out a clear case of violation of any law that will necessitate the recall of said contract. Indeed, the anti-graft court has not put forward any specific stipulation therein that is at war with any law, or the Constitution, for that matter. It is even clear as day that none of the parties who entered into the two agreements with petitioner Cojuangco contested nor sought the nullification of said agreements, more particularly

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the PCA who is always provided legal advice in said transactions by the Government corporate counsel, and a battery of lawyers and presumably the COA auditor assigned to said agency. A government agency, like the PCA, stoops down to level of an ordinary citizen when it enters into a private transaction with private individuals. In this setting, PCA is bound by the law on contracts and is bound to comply with the terms of the PCA-Cojuangco Agreement which is the law between the parties. With the silence of PCA not to challenge the validity of the PCA-Cojuangco Agreement and the inability of government to demonstrate the lack of ample consideration in the transaction, the Court is left with no other choice but to uphold the validity of said agreements.

**10. ID.; ID.; ID.; ID.; ID.; IT IS INCONTESTABLE THAT PETITIONER INDEED HAD THE RIGHT OR OPTION TO BUY THE FIRST UNITED BANK (FUB) SHARES AS BUTTRESSED BY THE EXECUTION AND ENFORCEMENT OF THE FIRST AGREEMENT.—** Even if conceding for the sake of argument that PCA is one of the buyers of the FUB shares in the PC-ECJ Agreement, still it does not necessarily follow that petitioner had no option to buy said shares from the group of Pedro Cojuangco. In fact, the very execution of the first agreement undeniably shows that he had the rights or option to buy said shares from the Pedro Cojuangco group. Otherwise, the PC-ECJ Agreement could not have been consummated and enforced. The conclusion is incontestable that petitioner indeed had the right or option to buy the FUB shares as buttressed by the execution and enforcement of the very document itself. We can opt to treat the PC-ECJ Agreement as a totally separate agreement from the PCA-Cojuangco Agreement but it will not detract from the fact that petitioner actually acquired the rights to the ownership of the FUB shares from the Pedro Cojuangco group. The consequence is he can legally sell the shares to PCA. In this scenario, he would resell the shares to PCA for a profit and PCA would still end up paying a higher price for the FUB shares. The "profit" that will accrue to petitioner may just be equal to the value of the shares that were given to petitioner as commission. Still we can only speculate as to the true intentions of the parties. Without any evidence adduced on this issue, the Court will not venture on any unproven

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conclusion or finding which should be avoided in judicial adjudication.

**11. ID.; ID.; ID.; ID.; ID.; THE FACT THAT THE EXECUTION OF THE SPECIAL POWER OF ATTORNEY (SPA) PCA-COJUANGCO AGREEMENT OCCURRED SEQUENTIALLY ON THE SAME DAY CANNOT, WITHOUT MORE, BE THE BASIS FOR THE CONCLUSION AS TO THE NON-EXISTENCE OF THE OPTION OF PETITIONER.—** The fact that the execution of the SPA and the PCA-Cojuangco Agreement occurred sequentially on the same day cannot, without more, be the basis for the conclusion as to the non-existence of the option of petitioner. Such conjecture cannot prevail over the fact that without petitioner Cojuangco, none of the two agreements in question would have been executed and implemented and the FUB shares could not have been successfully conveyed to PCA. Again, only the parties can explain the reasons behind the execution of the two agreements and the SPA on the same day. They were, however, precluded from elucidating the reasons behind such occurrence. In the absence of such illuminating proof, the proposition that the option does not exist has no leg to stand on. More importantly, the fact that the PC-ECJ Agreement was executed not earlier than May 25, 1975 proves that petitioner Cojuangco had an option to buy the FUB shares *prior* to that date. Again, it must be emphasized that from its terms, the first Agreement did not create the option. It, however, proved the exercise of the option by petitioner. The execution of the PC-ECJ Agreement on the same day as the PCA-Cojuangco Agreement more than satisfies paragraph 2 thereof which requires petitioner to exercise his option to purchase the FUB shares as promptly as practicable **after**, and not before, the execution of the second agreement.

**12. ID.; ID.; ID.; ID.; ID.; IN THE ABSENCE OF PROOF TO THE CONTRARY AND CONSIDERING THE ABSENCE OF ANY COMPLAINT OF ILLEGALITY OR FRAUD FROM THE CONTRACTING PARTIES, THEN THE PRESUMPTION THAT PRIVATE TRANSACTIONS MUST HAVE BEEN FAIR AND REGULAR MUST APPLY.—** The Sandiganbayan viewed the compensation of petitioner of 14,400 FUB shares

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as exorbitant. In the absence of proof to the contrary and considering the absence of any complaint of illegality or fraud from any of the contracting parties, then the presumption that "private transactions have been fair and regular" must apply.

**13. ID.; ID.; ID.; ID.; IT IS THE PCA WHICH HAS THE RIGHT TO CHALLENGE THE STIPULATIIONS ON THE MANAGEMENT CONTRACT AS UNENFORCEABLE; IT'S FAILURE TO DO SO MEANS THAT PCA HAS WAIVED AND FORFEITED ITS RIGHT TO NULLIFY THE STIPULATIONS AND IS NOW ESTOPPED FROM QUESTIONING THE SAME.—** Respondent interjects the thesis that PCA could not validly enter into a bank management agreement with petitioner since PCA has a personality separate and distinct from that of FUB. Evidently, it is PCA which has the right to challenge the stipulations on the management contract as unenforceable. However, PCA chose not to assail said stipulations and instead even complied with and implemented its prestations contained in said stipulations by installing petitioner as Chairman of UCPB. Thus, PCA has waived and forfeited its right to nullify said stipulations and is now estopped from questioning the same. In view of the foregoing, the Court is left with no option but to uphold the validity of the two agreements in question.

**14. ID.; ID.; PROPERTY; PUBLIC DOMINION; PETITIONER IS NOT ENTITLED TO THE UNITED COCONUT PLANTERS BANK (UCPB) SHARES WHICH WERE BOUGHT WITH PUBLIC FUNDS AND ARE PUBLIC PROPERTY.—** As the coconut levy funds partake of the nature of taxes and can only be used for public purpose, and importantly, for the purpose for which it was exacted, *i.e.*, the development, rehabilitation and stabilization of the coconut industry, they cannot be used to benefit—whether directly or indirectly— private individuals, be it by way of a commission, or as the subject Agreement interestingly words it, compensation. Consequently, Cojuangco cannot stand to benefit by receiving, in his private capacity, 7.22% of the FUB shares without violating the constitutional caveat that public funds can only be used for public purpose. Accordingly, the 7.22% FUB (UCPB) shares that were given

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to Cojuangco shall be returned to the Government, to be used "only for the benefit of all coconut farmers and for the development of the coconut industry."

**15. ID.; ID.; THE OTHER PROVISIONS OF THE PCA-COJUANGCO AGREEMENT WHICH ARE VALID SHALL BE ENFORCED AND RESPECTED.—** But apart from the stipulation in the PCA-Cojuangco Agreement, more specifically paragraph 4 in relation to paragraph 6 thereof, providing for the transfer to Cojuangco for the UCPB shares adverted to immediately above, other provisions are valid and shall be enforced, or shall be respected, if the corresponding prestation had already been performed. Invalid stipulations that are independent of, and divisible from, the rest of the agreement and which can easily be separated therefrom without doing violence to the manifest intention of the contracting minds do not nullify the entire contract.

**APPEARANCES OF COUNSEL**

*Estelito P. Mendoza* and *Hyacinth E. Rafael* for petitioner.

*The Solicitor General* for public respondent.

*Angara Abello Concepcion Regala and Cruz* for Cocofed, *et al*.

*Cesar G. David* and *Francisco B.A. Saavedra* for UCPB.

*Sycip Salazar Hernandez & Gatmaitan* for San Miguel Corp.

## D E C I S I O N

**VELASCO, JR., *J.*:**

### The Case

Of the several coconut levy appealed cases that stemmed from certain issuances of the Sandiganbayan in its Civil Case No. 0033, the present recourse proves to be one of the most difficult.

In particular, the instant petition for review under Rule 45 of the Rules of Court assails and seeks to annul a portion of the Partial Summary Judgment dated July 11, 2003, as affirmed

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in a Resolution of December 28, 2004, both rendered by the Sandiganbayan in its **Civil Case ("CC") No. 0033-A** (the judgment shall hereinafter be referred to as "PSJ-A"), entitled **"***Republic of the Philippines, Plaintiff, v. Eduardo M. Cojuangco, Jr., et al., Defendants, COCOFED, et al., BALLARES, et al., Class Action Movants.*" CC No. 0033-A is the result of the splitting into eight (8) amended complaints of CC No. 0033 entitled, "*Republic of the Philippines v. Eduardo Cojuangco, Jr., et al.,*" a suit for recovery of ill-gotten wealth commenced by the Presidential Commission on Good Government ("PCGG"), for the Republic of the Philippines ("Republic"), against Eduardo M. Cojuangco, Jr. ("Cojuangco") and several individuals, among them, Ferdinand E. Marcos, Maria Clara Lobregat ("Lobregat"), and Danilo S. Ursua ("Ursua"). Each of the eight (8) subdivided complaints, CC No. 0033-A to CC No. 0033-H, correspondingly impleaded as defendants only the alleged participants in the transaction/s subject of the suit, or who are averred as owner/s of the assets involved.

Apart from this recourse, We clarify right off that PSJ-A was challenged in two other separate but consolidated petitions for review, one commenced by COCOFED, *et al*., docketed as G.R. Nos. 177857-58, and the other, interposed by Danilo S. Ursua, and docketed as G.R. No. 178193.

By Decision dated January 24, 2012, in the aforesaid G.R. Nos. 177857-58 (*COCOFED, et al. v. Republic*) and G.R. No. 178193 (*Ursua v. Republic*) consolidated cases[1] hereinafter collectively referred to as ("***COCOFED v. Republic***"), the Court addressed and resolved all key matters elevated to it in relation to PSJ-A, except for the issues raised in the instant petition which have not yet been resolved therein. In the same decision, We made clear that: (1) PSJ-A is subject of another petition for review interposed by Eduardo Cojuangco, Jr., in G.R. No. 180705, entitled *Eduardo M. Cojuangco, Jr. v. Republic of the Philippines*, which shall be decided separately by the Court,[2] and (2) the issues raised in the instant petition

[1] G.R. Nos. 177857-58 & 178193, January 24, 2012.

[2] *Id.*

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should not be affected by the earlier decision "save for determinatively legal issues directly addressed [t]herein."[3]

For a better perspective, the instant recourse seeks to reverse the Partial Summary Judgment[4] of the anti-graft court dated **July 11, 2003,** as reiterated in a Resolution[5] of December 28, 2004, denying COCOFED's motion for reconsideration, and the **May 11, 2007** Resolution[6] denying COCOFED's motion to set case for trial and declaring the partial summary judgment final and appealable, all issued in PSJ-A. In our adverted January 24, 2012 Decision in *COCOFED v. Republic*, we affirmed with modification PSJ-A of the Sandiganbayan, and its Partial Summary Judgment in Civil Case No. 0033-F, dated **May 7, 2004** (hereinafter referred to as "PSJ-F').[7]

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[3] *Id.*

[4] Penned by Associate Justice Teresita Leonardo-De Castro (now a member of this Court), concurred in by Associate Justices Diosdado M. Peralta (now also a member of this Court) and Francisco H. Villaruz, Jr.; *rollo*, pp. 179-261.

[5] *Rollo*, pp. 361-400.

[6] *Id.* at 1043-53.

[7] *COCOFED v. Republic*, G.R. Nos. 177857-58 & 178193, January 24, 2012.

The dispositive portion of the Our modificatory decision reads:

**WHEREFORE**, the petitions in G.R. Nos. 177857-58 and 178793 are hereby **DENIED.** The Partial Summary Judgment dated July 11, 2003 in Civil Case No. 0033-A as reiterated with modification in Resolution dated June 5, 2007, as well as the Partial Summary Judgment dated May 7, 2004 in Civil Case No. 0033-F, which was effectively amended in Resolution dated May 11, 2007, are **AFFIRMED with modification**, only with respect to those issues subject of the petitions in G.R. Nos. 177857-58 and 178193. However, the issues raised in G.R. No. 180705 in relation to Partial Summary Judgment dated July 11, 2003 and Resolution dated June 5, 2007 in Civil Case No. 0033-A, shall be decided by this Court in a separate decision.

The Partial Summary Judgment in Civil Case No. 0033-A dated July 11, 2003, is hereby **MODIFIED,** and shall read as follows:

WHEREFORE, in view of the foregoing, We rule as follows:

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SUMMARY OF THE COURT'S RULING.

A. Re: CLASS ACTION MOTION FOR A SEPARATE SUMMARY JUDGMENT dated April 11, 2001 filed by Defendant Maria Clara L. Lobregat, COCOFED, *et al.*, and Ballares, *et al.*

The Class Action Motion for Separate Summary Judgment dated April 11, 2001 filed by defendant Maria Clara L. Lobregat, COCOFED, *et al.* and Ballares, *et al.*, is hereby DENIED for lack of merit.

B. Re: MOTION FOR PARTIAL SUMMARY JUDGMENT (RE: COCOFED, *ET AL.* AND BALLARES, *ET AL.)* dated April 22, 2002 filed by Plaintiff.

1. a. The portion of Section 1 of P.D. No. 755, which reads:

…and that the Philippine Coconut Authority is hereby authorized to distribute, for free, the shares of stock of the bank it acquired to the coconut farmers under such rules and regulations it may promulgate.

taken in relation to Section 2 of the same P.D., is unconstitutional: (i) for having allowed the use of the CCSF to benefit directly private interest by the outright and unconditional grant of absolute ownership of the FUB/ UCPB shares paid for by PCA entirely with the CCSF to the undefined "coconut farmers", which negated or circumvented the national policy or public purpose declared by P.D. No. 755 to accelerate the growth and development of the coconut industry and achieve its vertical integration; and (ii) for having unduly delegated legislative power to the PCA.

b. The implementing regulations issued by PCA, namely, Administrative Order No. 1, Series of 1975 and Resolution No. 074-78 are likewise invalid for their failure to see to it that the distribution of shares serve exclusively or at least primarily or directly the aforementioned public purpose or national policy declared by P.D. No. 755.

2. Section 2 of P.D. No. 755 which mandated that the coconut levy funds shall not be considered special and/or fiduciary funds nor part of the general funds of the national government and similar provisions of Sec. 5, Art. III, P.D. No. 961 and Sec. 5, Art. III, P.D. No. 1468 contravene the provisions of the Constitution, particularly, Art. IX (D), Sec. 2; and Article VI, Sec. 29 (3).

3. Lobregat, COCOFED, *et al.* and Ballares, *et al.* have not legally and validly obtained title of ownership over the subject UCPB shares by virtue of P.D. No. 755, the Agreement dated May 25, 1975 between the PCA and defendant Cojuangco, and PCA implementing rules, namely, Adm. Order No. 1, s. 1975 and Resolution No. 074-78.

4. The so-called "Farmers' UCPB shares" covered by 64.98% of the UCPB shares of stock, which formed part of the 72.2% of the shares of stock of the former FUB and now of the UCPB, the entire consideration of which was charged by PCA to the CCSF, are hereby declared conclusively owned by, the Plaintiff Republic of the Philippines.

… … …

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SO ORDERED.

The Partial Summary Judgment in Civil Case No. 0033-F dated May 7, 2004, is hereby **MODIFIED**, and shall read as follows:

**WHEREFORE, the MOTION FOR EXECUTION OF PARTIAL SUMMARY JUDGMENT (RE: CIIF BLOCK OF SMC SHARES OF STOCK)** dated August 8, 2005 of the plaintiff is hereby denied for lack of merit. However, this Court orders the severance of this particular claim of Plaintiff. The Partial Summary Judgment dated May 7, 2004 is now considered a separate final and appealable judgment with respect to the said CIIF Block of SMC shares of stock.

The Partial Summary Judgment rendered on May 7, 2004 is modified by deleting the last paragraph of the dispositive portion, which will now read, as follows:

**WHEREFORE, in view of the foregoing, we hold that:**

The Motion for Partial Summary Judgment (Re: Defendants CIIF Companies, 14 Holding Companies and Cocofed, *et al.*) filed by Plaintiff is hereby **GRANTED. ACCORDINGLY, THE CIIF COMPANIES, NAMELY:**

1. Southern Luzon Coconut Oil Mills (SOLCOM);
2. Cagayan de Oro Oil Co., Inc. (CAGOIL);
3. Iligan Coconut Industries, Inc. (ILICOCO);
4. San Pablo Manufacturing Corp. (SPMC);
5. Granexport Manufacturing Corp. (GRANEX); and
6. Legaspi Oil Co., Inc. (LEGOIL),

**AS WELL AS THE 14 HOLDING COMPANIES, NAMELY:**

1. Soriano Shares, Inc.;
2. ACS Investors, Inc.;
3. Roxas Shares, Inc.;
4. Arc Investors; Inc.;
5. Toda Holdings, Inc.;
6. AP Holdings, Inc.;
7. Fernandez Holdings, Inc.;
8. SMC Officers Corps, Inc.;
9. Te Deum Resources, Inc.;
10. Anglo Ventures, Inc.;
11. Randy Allied Ventures, Inc.;
12. Rock Steel Resources, Inc.;
13. Valhalla Properties Ltd., Inc.; and
14. First Meridian Development, Inc.

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More specifically, We upheld the Sandiganbayan's ruling that the coconut levy funds are special public funds of the Government. Consequently, We affirmed the Sandiganbayan's declaration that Sections 1 and 2 of Presidential Decree ("P.D.") 755, Section 3, Article III of P.D. 961 and Section 3, Article III of P.D. 1468, as well as the pertinent implementing regulations of the Philippine Coconut Authority ("PCA"), are unconstitutional for allowing the use and/or the distribution of properties acquired through the coconut levy funds to private individuals for their own direct benefit and absolute ownership. The Decision also affirmed the Government's ownership of the six CIIF companies, the fourteen holding companies, and the CIIF block of San Miguel Corporation shares of stock, for having likewise been acquired using the coconut levy funds. Accordingly, the properties subject of the January 24, 2012 Decision were declared owned by and ordered reconveyed to the Government, to be used only for the benefit of all coconut farmers and for the development of the coconut industry.

By Resolution of September 4, 2012,[8] the Court affirmed the above-stated Decision promulgated on January 24, 2012.

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**AND THE CIIF BLOCK OF SAN MIGUEL CORPORATION (SMC) SHARES OF STOCK TOTALING 33,133,266 SHARES AS OF 1983 TOGETHER WITH ALL DIVIDENDS DECLARED, PAID AND ISSUED THEREON AS WELL AS ANY INCREMENTS THERETO ARISING FROM, BUT NOT LIMITED TO, EXERCISE OF PRE-EMPTIVE RIGHTS ARE DECLARED OWNED BY THE GOVERNMENT TO BE USED ONLY FOR THE BENEFIT OF ALL COCONUT FARMERS AND FOR THE DEVELOPMENT OF THE COCONUT INDUSTRY, AND ORDERED RECONVEYED TO THE GOVERNMENT.**

**THE COURT AFFIRMS THE RESOLUTIONS ISSUED BY THE SANDIGANBAYAN ON JUNE 5, 2007 IN CIVIL CASE NO. 0033-A AND ON MAY 11, 2007 IN CIVIL CASE NO. 0033-F, THAT THERE IS NO MORE NECESSITY OF FURTHER TRIAL WITH RESPECT TO THE ISSUE OF OWNERSHIP OF (1) THE SEQUESTERED UCPB SHARES, (2) THE CIIF BLOCK OF SMC SHARES, AND (3) THE CIIF COMPANIES. AS THEY HAVE FINALLY BEEN ADJUDICATED IN THE AFOREMENTIONED PARTIAL SUMMARY JUDGMENTS DATED JULY 11, 2003 AND MAY 7, 2004.**

**SO ORDERED.**

…. (Emphasis and underlining in the original)

[8] Resolution, *COCOFED v. Republic*, G.R. Nos. 177857-58 & 178193, September 4, 2012.

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It bears to stress at this juncture that the only portion of the appealed Partial Summary Judgment dated July 11, 2003 ("PSJ-A") which remains at issue revolves around the following decretal holdings of that court relating to the "compensation" paid to petitioner for exercising his personal and exclusive option to acquire the FUB/UCPB shares.[9] It will be recalled that the Sandiganbayan declared the Agreement between the PCA and Cojuangco containing the assailed "compensation" null and void for not having the required valuable consideration. Consequently, the UCPB shares of stocks that are subject of the Agreement were declared conclusively owned by the Government. It also held that the Agreement did not have the effect of law as it was not published as part of P.D. 755, even if Section 1 thereof made reference to the same.

**Facts**

We reproduce, below, portions of the statement of facts in *COCOFED v. Republic* relevant to the present case:[10]

In 1971, **Republic Act No. ("R.A.") 6260** was enacted creating the Coconut Investment Company ("CIC") to administer the **Coconut Investment Fund** ("CIF"), which, under Section 8 thereof, was to be sourced from a PhP 0.55 levy on the sale of every 100 kg. of copra. Of the PhP 0.55 levy of which the copra seller was – or ought to be – issued **COCOFUND** receipts, PhP 0.02 was placed at the disposition of COCOFED, the national association of coconut producers declared by the Philippine Coconut Administration ("PHILCOA" now "PCA") as having the largest membership.

The declaration of martial law in September 1972 saw the issuance of several presidential decrees ("P.D.") purportedly designed to improve the coconut industry through the collection and use of the coconut levy fund. While coming generally from impositions on the first sale of copra, the coconut levy fund came under various names x x x. Charged with the duty of collecting and administering the Fund was PCA. Like COCOFED with which it had a legal linkage, the PCA, by statutory provisions scattered in different coco levy decrees, had its share of the coco levy.

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[9] *Rollo*, pp. 259-260.

[10] *COCOFED v. Republic*, G.R. Nos. 177857-58 & 178193, January 24, 2012.

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The following were some of the issuances on the coco levy, its collection and utilization, how the proceeds of the levy will be managed and by whom and the purpose it was supposed to serve:

1. **P.D. No. 276** established the Coconut Consumers Stabilization Fund ("**CCSF**") and declared the proceeds of the CCSF levy as trust fund, to be utilized to subsidize the sale of coconut-based products, thus stabilizing the price of edible oil.

2. **P.D. No. 582** created the Coconut Industry Development Fund ("**CIDF**") to finance the operation of a hybrid coconut seed farm.

3. Then came **P.D. No. 755** providing under its Section 1 the following:

It is hereby declared that the policy of the State is to provide readily available credit facilities to the coconut farmers at preferential rates; that this policy can be expeditiously and efficiently realized by the implementation of the "Agreement for the Acquisition of a Commercial Bank for the benefit of Coconut Farmers" executed by the [PCA]…; and that the [PCA] is hereby authorized to distribute, for free, the shares of stock of the bank it acquired to the coconut farmers….

Towards achieving the policy thus declared, P.D. No. 755, under its **Section 2,** authorized PCA to utilize the CCSF and the CIDF collections to acquire a commercial bank and **deposit the CCSF levy collections in said bank interest free,** the deposit withdrawable only when the bank has attained a certain level of sufficiency in its equity capital. The same section also decreed that all levies PCA is authorized to collect shall not be considered as special and/or fiduciary funds or form part of the general funds of the government within the contemplation of P.D. No. 711.

4. **P.D. No. 961** codified the various laws relating to the development of coconut/palm oil industries.

5. The relevant provisions of P.D. No. 961, as later amended by **P.D. No. 1468 (***Revised Coconut Industry Code*), read:

ARTICLE III
Levies

Section 1. *Coconut Consumers Stabilization Fund Levy.* — The [PCA] is hereby empowered to impose and collect … the Coconut Consumers Stabilization Fund Levy, ….

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... ... ...

> Section 5. *Exemption.* — The **[CCSF]** and the **[CIDF]** as well as all disbursements as herein authorized, shall **not** be construed … as **special and/or fiduciary funds,** or as **part of the general funds** of the national government within the contemplation of PD 711; … **the intention being that said Fund and the disbursements thereof as herein authorized for the benefit of the coconut farmers** shall be **owned by them in their private capacities**: …. (Emphasis supplied)

6. **Letter of Instructions No. ("LOI") 926,** s. of 1979, made reference to the creation, out of other coco levy funds, of the Coconut Industry Investment Fund ("**CIIF**") in P.D. No. 1468 and entrusted a portion of the CIIF levy to UCPB for investment, on behalf of coconut farmers, in oil mills and other private corporations, with the following equity ownership structure:

> Section 2. Organization of the Cooperative Endeavor. – The [UCPB], in its capacity as the investment arm of the coconut farmers thru the [CIIF] … is hereby directed to invest, on behalf of the coconut farmers, such portion of the CIIF … in private corporations … under the following guidelines:
>
> a) The coconut farmers shall own or control at least … (50%) of the outstanding voting capital stock of the private corporation [acquired] thru the CIIF and/or corporation owned or controlled by the farmers thru the CIIF …. (Words in bracket added.)

Through the years, a part of the coconut levy funds went directly or indirectly to [finance] various projects and/or was converted into various assets or investments.[11] Relevant to the present petition is the acquisition of the **First United Bank** ("FUB"), which was subsequently renamed as **United Coconut Planters Bank** ("UCPB").[12]

Apropos the intended acquisition of a commercial bank for the purpose stated earlier, it would appear that FUB was the bank of choice which Pedro Cojuangco's group (collectively, "Pedro Cojuangco") had control of. The plan, then, was for PCA to buy all of Pedro Cojuangco's shares in FUB. However, as later events

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[11] *Id.*; citing *Republic v. Sandiganbayan*, G.R. No. 118661, January 22, 2007, 512 SCRA 25.

[12] *Id.*

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unfolded, a simple direct sale from the seller (Pedro) to PCA did not ensue as it was made to appear that Cojuangco had the exclusive option to acquire the former's FUB controlling interests. Emerging from this elaborate, circuitous arrangement were two deeds. The first one was simply denominated as *Agreement,* dated May 1975, entered into by and between Cojuangco for and in his behalf and in behalf of "*certain other buyers*", and Pedro Cojuangco in which the former was purportedly accorded the option to buy **72.2%** of FUB's outstanding capital stock, or 137,866 shares (the "option shares," for brevity), at PhP 200 per share. On its face, this agreement does not mention the word "option."

The second but related contract, dated May 25, 1975, was denominated as *Agreement for the Acquisition of a Commercial Bank for the Benefit of the Coconut Farmers of the Philippines.* It had PCA, for itself and for the benefit of the coconut farmers, purchase from Cojuangco the shares of stock subject of the First Agreement for PhP200.00 per share. As additional consideration for PCA's buy-out of what Cojuangco would later claim to be his exclusive and personal option, it was stipulated that, from PCA, Cojuangco shall receive equity in FUB amounting to 10%, or **7.22%,** of the 72.2%, or fully paid shares. And so as not to dilute Cojuangco's equity position in FUB, later UCPB, the PCA agreed under paragraph 6 (b) of the second agreement to cede over to the former a number of fully paid FUB shares out of the shares it (PCA) undertakes to eventually subscribe. It was further stipulated that Cojuangco would act as bank president for an extendible period of 5 years.

Apart from the aforementioned 72.2%, PCA purchased from other FUB shareholders 6,534 shares [of which Cojuangco, as may be gathered from the records, got 10%.].

While the 64.98% portion of the option shares (72.2% – 7.22% = 64.98%) ostensibly pertained to the farmers, the corresponding stock certificates supposedly representing the farmers' equity were in the name of and delivered to PCA. There were, however, shares forming part of the aforesaid 64.98% portion, which ended up in the hands of non-farmers. The remaining 27.8% of the FUB capital stock were not covered by any of the agreements.

Under paragraph #8 of the second agreement, PCA agreed to expeditiously distribute the FUB shares purchased to such "*coconut farmers holding registered COCOFUND receipts*" on equitable basis.

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As found by the Sandiganbayan, the PCA appropriated, out of its own fund, an amount for the purchase of the said 72.2% equity, **albeit it would later reimburse itself from the coconut levy fund**.

And per Cojuangco's own admission, PCA paid, out of the CCSF, the entire acquisition price for the 72.2% option shares.[13]

As of June 30, 1975, the list of FUB stockholders included Cojuangco with 14,440 shares and PCA with 129,955 shares.[14] It would appear later that, pursuant to the stipulation on maintaining Cojuangco's equity position in the bank, PCA would cede to him 10% of its subscriptions to (a) the authorized but unissued shares of FUB and (b) the increase in FUB's capital stock (the equivalent of 158,840 and 649,800 shares, respectively). In all, from the "mother" PCA shares, Cojuangco would receive a total of 95,304 FUB (UCPB) shares broken down as follows: 14,440 shares + 10% (158,840 shares) + 10% (649,800 shares) = 95,304.[15]

We further quote, from *COCOFED v. Republic*, facts relevant to the instant case:[16]

Shortly after the execution of the PCA – Cojuangco Agreement, President Marcos issued, on July 29, 1975, P.D. No. 755 directing x x x as narrated, PCA to use the CCSF and CIDF to acquire a commercial bank to provide coco farmers with "*readily available credit facilities at preferential rate*" x x x.

Then came the 1986 EDSA event. One of the priorities of then President Corazon C. Aquino's revolutionary government was the recovery of ill-gotten wealth reportedly amassed by the Marcos family and close relatives, their nominees and associates. Apropos thereto, she issued Executive Order Nos. (EO) 1, 2 and 14, as amended by

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[13] *Republic v. COCOFED*, G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462, 477.

[14] *Republic v. Sandiganbayan*, G.R. No. 118661, January 22, 2007, 512 SCRA 25.

[15] *Rollo*, p. 263.

[16] *COCOFED v. Republic*, G.R. Nos. 177857-58 & 178193, January 24, 2012.

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E.O. 14-A, all series of 1986. E.O. 1 created the PCGG and provided it with the tools and processes it may avail of in the recovery efforts;[17] E.O. No. 2 asserted that the ill-gotten assets and properties come in the form of shares of stocks, *etc.*, while E.O. No. 14 conferred on the Sandiganbayan exclusive and original jurisdiction over ill-gotten wealth cases, with the proviso that "*technical rules of procedure and evidence shall not be applied strictly*" to the civil cases filed under the EO. Pursuant to these issuances, the PCGG issued numerous orders of sequestration, among which were those handed out x x x against shares of stock in UCPB purportedly owned by or registered in the names of (a) the more than a million coconut farmers, (b) the CIIF companies and (c) Cojuangco, Jr., including the SMC shares held by the CIIF companies. On July 31, 1987, the PCGG instituted before the Sandiganbayan a recovery suit docketed thereat as CC No. 0033.

x x x x x x x x x

3. Civil Case 0033 x x x would be subdivided into eight complaints, docketed as CC 0033-A to CC 0033-H.

x x x x x x x x x

5. By Decision of **December 14, 2001**, in **G.R. Nos. 147062-64** (*Republic v. COCOFED*),[18] the Court declared the coco levy funds as *prima facie* public funds. And purchased as the sequestered UCPB shares were by such funds, beneficial ownership thereon and the corollary voting rights *prima facie* pertain, according to the Court, to the government.

x x x x x x x x x

Correlatively, the Republic, on the strength of the December 14, 2001 ruling in *Republic v. COCOFED* and on the argument, among others, that the claim of COCOFED and Ballares *et al*., over the subject UCPB shares is based solely on the supposed COCOFUND receipts issued for payment of the RA 6260 CIF levy, filed a *Motion for Partial Summary Judgment* [RE: COCOFED, *et al*. and Ballares, *et al*.] dated April 22, 2002, praying that a summary judgment be rendered declaring:

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[17] The validity and propriety of these processes were sustained by the Court in *BASECO v. PCGG*, No. 75885, May 27, 1987, 150 SCRA 181.

[18] Reported in 372 SCRA 2001.

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a. That Section 2 of [PD] 755, Section 5, Article III of P.D. 961 and Section 5, Article III of P.D. No. 1468 are unconstitutional;

b. That x x x (CIF) payments under x x x (R.A.) No. 6260 are not valid and legal bases for ownership claims over UCPB shares; and

c. That COCOFED, *et al.*, and Ballares, *et al.* have not legally and validly obtained title over the subject UCPB shares.

Right after it filed the *Motion for Partial Summary Judgment* [RE: COCOFED, *et al*. and *Ballares, et al.*, the Republic interposed a *Motion for Partial Summary Judgment [Re: Eduardo M. Cojuangco, Jr.],* praying that a summary judgment be rendered:

a. Declaring that Section 1 of P.D. No. 755 is unconstitutional insofar as it validates the provisions in the "[PCA-Cojuangco] Agreement x x x" dated May 25, 1975 providing payment of ten percent (10%) commission to defendant Cojuangco with respect to the [FUB], now [UCPB] shares subject matter thereof;

b. Declaring that x x x Cojuangco, Jr. and his fronts, nominees and dummies, including x x x and Danilo S. Ursua, have not legally and validly obtained title over the subject UCPB shares; and

c. Declaring that the government is the lawful and true owner of the subject UCPB shares registered in the names of … Cojuangco, Jr. and the entities and persons above-enumerated, for the benefit of all coconut farmers. x x x

Following an exchange of pleadings, the Republic filed its sur-rejoinder praying that it be conclusively declared the true and absolute owner of the coconut levy funds and the UCPB shares acquired therefrom.[19] We quote from *COCOFED v. Republic*:[20]

A joint hearing on the separate motions for summary judgment to determine what material facts exist with or without controversy

[19] *Rollo* (G.R. Nos. 177857-58), pp. 830-871.

[20] G.R. Nos. 177857-58 & 178193, January 24, 2012.

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then ensued. By Order of March 11, 2003, the Sandiganbayan detailed, based on this Court's ruling in related ill-gotten cases, the parties' manifestations made in open court and the pleadings and evidence on record, the facts it found to be without substantial controversy, together with the admissions and/or extent of the admission made by the parties respecting relevant facts, as follows:

> As culled from the exhaustive discussions and manifestations of the parties in open court of their respective pleadings and evidence on record, the facts which exist without any substantial controversy are set forth hereunder, together with the admissions and/or the extent or scope of the admissions made by the parties relating to the relevant facts:
>
> 1. The late President Ferdinand E. Marcos was President x x x for two terms under the 1935 Constitution and, during the second term, he declared Martial Law through Proclamation No. 1081 dated September 21, 1972.
>
> 2. On January 17, 1973, [he] issued Proclamation No. 1102 announcing the ratification of the 1973 Constitution.
>
> 3. From January 17, 1973 to April 7, 1981, [he] x x x exercised the powers and prerogative of President under the 1935 Constitution and the powers and prerogative of President x x x the 1973 Constitution.
>
> [He] x x x promulgated various [P.D.s], among which were P.D. No. 232, P.D. No. 276, P.D. No. 414, P.D. No. 755, P.D. No. 961 and P.D. No. 1468.
>
> 4. On April 17, 1981, amendments to the 1973 Constitution were effected and, on June 30, 1981, [he], after being elected President, "reassumed the title and exercised the powers of the President until 25 February 1986."
>
> 5. Defendants Maria Clara Lobregat and Jose R. Eleazar, Jr. were [PCA] Directors x x x during the period 1970 to 1986 x x x.
>
> 6. Plaintiff admits the existence of the following agreements which are attached as Annexes "A" and "B" to the Opposition dated October 10, 2002 of defendant Eduardo M. Cojuangco, Jr. to the above-cited Motion for Partial Summary Judgment:
>
> a) "This Agreement made and entered into this _____ day of May, 1975 at Makati, Rizal, Philippines, by and between:

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PEDRO COJUANGCO, Filipino, of legal age and with residence at 1575 Princeton St., Mandaluyong, Rizal, for and in his own behalf and in behalf of certain other stockholders of First United Bank listed in Annex "A" attached hereto (hereinafter collectively called the SELLERS);

– and –

EDUARDO COJUANGCO, JR., Filipino, of legal age and with residence at 136 9th Street corner Balete Drive, Quezon City, represented in this act by his duly authorized attorney-in-fact, EDGARDO J. ANGARA, for and in his own behalf and in behalf of certain other buyers, (hereinafter collectively called the BUYERS)";

WITNESSETH: That

WHEREAS, the SELLERS own of record and beneficially a total of 137,866 shares of stock, with a par value of ₱100.00 each, of the common stock of the First United Bank (the "Bank"), a commercial banking corporation existing under the laws of the Philippines;

WHEREAS, the BUYERS desire to purchase, and the SELLERS are willing to sell, the aforementioned shares of stock totaling 137,866 shares (hereinafter called the "Contract Shares") owned by the SELLERS due to their special relationship to EDUARDO COJUANGCO, JR.;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants herein contained, the parties agree as follows:

1. Sale and Purchase of Contract Shares

Subject to the terms and conditions of this Agreement, the SELLERS hereby sell, assign, transfer and convey unto the BUYERS, and the BUYERS hereby purchase and acquire, the Contract Shares free and clear of all liens and encumbrances thereon.

2. Contract Price

The purchase price per share of the Contract Shares payable by the BUYERS is ₱200.00 or an aggregate price of ₱27,573,200.00 (the "Contract Price").

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3. Delivery of, and payment for, stock certificates

**Upon the execution of this Agreement, (i) the SELLERS shall deliver to the BUYERS the stock certificates representing the Contract Shares, free and clear of all liens, encumbrances, obligations, liabilities and other burdens in favor of the Bank or third parties, duly endorsed in blank or with stock powers sufficient to transfer the shares to bearer; and (ii) BUYERS shall deliver to the SELLERS ₱27,511,295.50 representing the Contract Price less the amount of stock transfer taxes payable by the SELLERS, which the BUYERS undertake to remit to the appropriate authorities. (Emphasis added.)**

4. Representation and Warranties of Sellers

The SELLERS respectively and independently of each other represent and warrant that:

(a) The SELLERS are the lawful owners of, with good marketable title to, the Contract Shares and that (i) the certificates to be delivered pursuant thereto have been validly issued and are fully paid and non-assessable; (ii) the Contract Shares are free and clear of all liens, encumbrances, obligations, liabilities and other burdens in favor of the Bank or third parties x x x.

This representation shall survive the execution and delivery of this Agreement and the consummation or transfer hereby contemplated.

(b) The execution, delivery and performance of this Agreement by the SELLERS does not conflict with or constitute any breach of any provision in any agreement to which they are a party or by which they may be bound.

(c) They have complied with the condition set forth in Article X of the Amended Articles of Incorporation of the Bank.

5. Representation of BUYERS

xxx x x x xxx

6. Implementation

The parties hereto hereby agree to execute or cause

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to be executed such documents and instruments as may be required in order to carry out the intent and purpose of this Agreement.

7. Notices

x x x x x x x x x

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands at the place and on the date first above written.

PEDRO COJUANGCO (on his own behalf and in behalf of the other Sellers listed in Annex "A" hereof)
(SELLERS)

EDUARDO COJUANGCO, JR. (on his own behalf and in behalf of the other Buyers)
(BUYERS)

By:

EDGARDO J. ANGARA
Attorney-in-Fact

x x x x x x x x x

b) "Agreement for the Acquisition of a Commercial Bank for the Benefit of the Coconut Farmers of the Philippines, made and entered into this 25th day of May 1975 at Makati, Rizal, Philippines, by and between:

EDUARDO M. COJUANGCO, JR., Filipino, of legal age, with business address at 10th Floor, Sikatuna Building, Ayala Avenue, Makati, Rizal, hereinafter referred to as the SELLER;

– and –

PHILIPPINE COCONUT AUTHORITY, a public corporation created by Presidential Decree No. 232, as amended, for itself and for the benefit of the coconut farmers of the Philippines, (hereinafter called the BUYER)"

WITNESSETH: That

WHEREAS, on May 17, 1975, the Philippine Coconut Producers Federation ("PCPF"), through its Board of Directors, expressed the desire of the coconut farmers to own a commercial bank which will be an effective

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instrument to solve the perennial credit problems and, for that purpose, passed a resolution requesting the PCA to negotiate with the SELLER for the transfer to the coconut farmers of the SELLER's option to buy the First United Bank (the "Bank") under such terms and conditions as BUYER may deem to be in the best interest of the coconut farmers and instructed Mrs. Maria Clara Lobregat to convey such request to the BUYER;

WHEREAS, the PCPF further instructed Mrs. Maria Clara Lobregat to make representations with the BUYER to utilize its funds to finance the purchase of the Bank;

WHEREAS, the SELLER has the exclusive and personal option to buy 144,400 shares (the "Option Shares") of the Bank, constituting 72.2% of the present outstanding shares of stock of the Bank, at the price of ₱200.00 per share, which option only the SELLER can validly exercise;

WHEREAS, in response to the representations made by the coconut farmers, the BUYER has requested the SELLER to exercise his personal option for the benefit of the coconut farmers;

WHEREAS, the SELLER is willing to transfer the Option Shares to the BUYER at a price equal to his option price of ₱200 per share;

WHEREAS, recognizing that ownership by the coconut farmers of a commercial bank is a permanent solution to their perennial credit problems, that it will accelerate the growth and development of the coconut industry and that the policy of the state which the BUYER is required to implement is to achieve vertical integration thereof so that coconut farmers will become participants in, and beneficiaries of the development and growth of the coconut industry, the BUYER approved the request of PCPF that it acquire a commercial bank to be owned by the coconut farmers and, appropriated, for that purpose, the sum of ₱150 Million to enable the farmers to buy the Bank and capitalize the Bank to such an extension as to be in a position to adopt a credit policy for the coconut farmers at preferential rates;

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WHEREAS, x x x the BUYER is willing to subscribe to additional shares ("Subscribed Shares") and place the Bank in a more favorable financial position to extend loans and credit facilities to coconut farmers at preferential rates;

NOW, THEREFORE, for and in consideration of the foregoing premises and the other terms and conditions hereinafter contained, the parties hereby declare and affirm that their principal contractual intent is (1) to ensure that the coconut farmers own at least 60% of the outstanding capital stock of the Bank; and (2) that the SELLER shall receive compensation for exercising his personal and exclusive option to acquire the Option Shares, for transferring such shares to the coconut farmers at the option price of ₱200 per share, and for performing the management services required of him hereunder.

1. To ensure that the transfer to the coconut farmers of the Option Shares is effected with the least possible delay and to provide for the faithful performance of the obligations of the parties hereunder, the parties hereby appoint the Philippine National Bank as their escrow agent (the "Escrow Agent").

Upon execution of this Agreement, the BUYER shall deposit with the Escrow Agent such amount as may be necessary to implement the terms of this Agreement x x x.

2. As promptly as practicable after execution of this Agreement, the SELLER shall exercise his option to acquire the Option Share and SELLER shall immediately thereafter deliver and turn over to the Escrow Agent such stock certificates as are herein provided to be received from the existing stockholders of the Bank by virtue of the exercise on the aforementioned option x x x.

3. To ensure the stability of the Bank and continuity of management and credit policies to be adopted for the benefit of the coconut farmers, the parties undertake to cause the stockholders and the Board of Directors of the Bank to authorize and approve a management contract between the Bank and the SELLER under the following terms:

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(a) The management contract shall be for a period of five (5) years, renewable for another five (5) years by mutual agreement of the SELLER and the Bank;

(b) The SELLER shall be elected President and shall hold office at the pleasure of the Board of Directors. While serving in such capacity, he shall be entitled to such salaries and emoluments as the Board of Directors may determine;

(c) The SELLER shall recruit and develop a professional management team to manage and operate the Bank under the control and supervision of the Board of Directors of the Bank;

(d) The BUYER undertakes to cause three (3) persons designated by the SELLER to be elected to the Board of Directors of the Bank;

(e) The SELLER shall receive no compensation for managing the Bank, other than such salaries or emoluments to which he may be entitled by virtue of the discharge of his function and duties as President, provided x x x and

(f) The management contract may be assigned to a management company owned and controlled by the SELLER.

4. As compensation for exercising his personal and exclusive option to acquire the Option Shares and for transferring such shares to the coconut farmers, as well as for performing the management services required of him, SELLER shall receive equity in the Bank amounting, in the aggregate, to 95,304 fully paid shares in accordance with the procedure set forth in paragraph 6 below;

5. In order to comply with the Central Bank program for increased capitalization of banks and to ensure that the Bank will be in a more favorable financial position to attain its objective to extend to the coconut farmers loans and credit facilities, the BUYER undertakes to subscribe to shares with an aggregate par value of ₱80,864,000 (the "Subscribed Shares"). The obligation of the BUYER with respect to the Subscribed Shares shall be as follows:

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(a) The BUYER undertakes to subscribe, for the benefit of the coconut farmers, to shares with an aggregate par value of ₱15,884,000 from the present authorized but unissued shares of the Bank; and

(b) The BUYER undertakes to subscribe, for the benefit of the coconut farmers, to shares with an aggregate par value of ₱64,980,000 from the increased capital stock of the Bank, which subscriptions shall be deemed made upon the approval by the stockholders of the increase of the authorized capital stock of the Bank from ₱50 Million to ₱140 Million.

The parties undertake to declare stock dividends of ₱8 Million out of the present authorized but unissued capital stock of ₱30 Million.

6. To carry into effect the agreement of the parties that the SELLER shall receive as his compensation 95,304 shares:

(a) The Escrow Agent shall, upon receipt from the SELLER of the stock certificates representing the Option Shares, duly endorsed in blank or with stock powers sufficient to transfer the same to bearer, present such stock certificates to the Transfer Agent of the Bank and shall cause such Transfer Agent to issue stock certificates of the Bank in the following ratio: one share in the name of the SELLER for every nine shares in the name of the BUYER.

(b) With respect to the Subscribed Shares, the BUYER undertakes, in order to prevent the dilution of SELLER's equity position, that it shall cede over to the SELLER 64,980 fully-paid shares out of the Subscribed Shares. Such undertaking shall be complied with in the following manner: upon receipt of advice that the BUYER has subscribed to the Subscribed Shares upon approval by the stockholders of the increase of the authorized capital stock of the Bank, the Escrow Agent shall thereupon issue a check in favor of the Bank covering the total payment for the Subscribed Shares. The Escrow Agent shall thereafter cause the Transfer Agent to issue a stock certificates of the Bank in the following

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ratio: one share in the name of the SELLER for every nine shares in the name of the BUYER.

7. The parties further undertake that the Board of Directors and management of the Bank shall establish and implement a loan policy for the Bank of making available for loans at preferential rates of interest to the coconut farmers x x x.

8. The BUYER shall expeditiously distribute from time to time the shares of the Bank, that shall be held by it for the benefit of the coconut farmers of the Philippines under the provisions of this Agreement, to such, coconut farmers holding registered COCOFUND receipts on such equitable basis as may be determine by the BUYER in its sound discretion.

9. x x x

10. To ensure that not only existing but future coconut farmers shall be participants in and beneficiaries of the credit policies, and shall be entitled to the benefit of loans and credit facilities to be extended by the Bank to coconut farmers at preferential rates, the shares held by the coconut farmers shall not be entitled to pre-emptive rights with respect to the unissued portion of the authorized capital stock or any increase thereof.

11. After the parties shall have acquired two-thirds (2/3) of the outstanding shares of the Bank, the parties shall call a special stockholders' meeting of the Bank:

(a) To classify the present authorized capital stock of ₱50,000,000 divided into 500,000 shares, with a par value of ₱100.00 per share into: 361,000 Class A shares, with an aggregate par value of ₱36,100,000 and 139,000 Class B shares, with an aggregate par value of ₱13,900,000. All of the Option Shares constituting 72.2% of the outstanding shares, shall be classified as Class A shares and the balance of the outstanding shares, constituting 27.8% of the outstanding shares, as Class B shares;

(b) To amend the articles of incorporation of the Bank to effect the following changes:

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(i) change of corporate name to First United Coconut Bank;

(ii) replace the present provision restricting the transferability of the shares with a limitation on ownership by any individual or entity to not more than 10% of the outstanding shares of the Bank;

(iii) provide that the holders of Class A shares shall not be entitled to pre-emptive rights with respect to the unissued portion of the authorized capital stock or any increase thereof; and

(iv) provide that the holders of Class B shares shall be absolutely entitled to pre-emptive rights, with respect to the unissued portion of Class B shares comprising part of the authorized capital stock or any increase thereof, to subscribe to Class B shares in proportion t the subscriptions of Class A shares, and to pay for their subscriptions to Class B shares within a period of five (5) years from the call of the Board of Directors.

(c) To increase the authorized capital stock of the Bank from ₱50 Million to ₱140 Million, divided into 1,010,800 Class A shares and 389,200 Class B shares, each with a par value of ₱100 per share;

(d) To declare a stock dividend of ₱8 Million payable to the SELLER, the BUYER and other stockholders of the Bank out of the present authorized but unissued capital stock of ₱30 Million;

(e) To amend the by-laws of the Bank accordingly; and

(f) To authorize and approve the management contract provided in paragraph 2 above.

The parties agree that they shall vote their shares and take all the necessary corporate action in order to carry into effect the foregoing provisions of this paragraph 11, including such other amendments of the articles of incorporation and by-laws of the Bank as

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are necessary in order to implement the intention of the parties with respect thereto.

12. It is the contemplation of the parties that the Bank shall achieve a financial and equity position to be able to lend to the coconut farmers at preferential rates.

In order to achieve such objective, the parties shall cause the Bank to adopt a policy of reinvestment, by way of stock dividends, of such percentage of the profits of the Bank as may be necessary.

13. The parties agree to execute or cause to be executed such documents and instruments as may be required in order to carry out the intent and purpose of this Agreement.

IN WITNESS WHEREOF x x x

PHILIPPINE COCONUT AUTHORITY

(BUYER)

By:

EDUARDO COJUANGCO, JR. MARIA CLARA L. LOBREGAT

(SELLER)

x x x x x x x x x

7. Defendants Lobregat, *et al*. and COCOFED, *et al*. and Ballares, *et al*. admit that the x x x (PCA) was the "other buyers" represented by defendant Eduardo M. Cojuangco, Jr. in the May 1975 Agreement entered into between Pedro Cojuangco (on his own behalf and in behalf of other sellers listed in Annex "A"of the agreement) and defendant Eduardo M. Cojuangco, Jr. (on his own behalf and in behalf of the other buyers). Defendant Cojuangco insists he was the "only buyer" under the aforesaid Agreement.

8. Defendant Eduardo M. Cojuangco, Jr. did not own any share in the x x x (FUB) prior to the execution of the two Agreements x x x.

9. Defendants Lobregat, *et al.*, and COCOFED, *et al.*, and Ballares, *et al*. admit that in addition to the 137,866 FUB shares

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of Pedro Cojuangco, *et al*. covered by the Agreement, other FUB stockholders sold their shares to PCA such that the total number of FUB shares purchased by PCA … increased from 137,866 shares to 144,400 shares, the OPTION SHARES referred to in the Agreement of May 25, 1975. Defendant Cojuangco did not make said admission as to the said 6,534 shares in excess of the 137,866 shares covered by the Agreement with Pedro Cojuangco.

10. Defendants Lobregat, *et al*. and COCOFED, *et al*. and Ballares, *et al.* admit that the Agreement, described in Section 1 of Presidential Decree (P.D.) No. 755 dated July 29, 1975 as the "Agreement for the Acquisition of a Commercial Bank for the Benefit of Coconut Farmers" executed by the Philippine Coconut Authority" and incorporated in Section 1 of P.D. No. 755 by reference, refers to the "AGREEMENT FOR THE ACQUISITION OF A COMMERCIAL BANK FOR THE BENEFIT OF THE COCONUT FARMERS OF THE PHILIPPINES" dated May 25, 1975 between defendant Eduardo M. Cojuangco, Jr. and the [PCA] (Annex "B" for defendant Cojuangco's OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT [RE: EDUARDO M. COJUANGCO, JR.] dated September 18, 2002).

Plaintiff refused to make the same admission.

11. As to whether P.D. No. 755 and the text of the agreement described therein was published, the Court takes judicial notice that P.D. No. 755 was published [in] x x x volume 71 of the Official Gazette but the text of the agreement x x x was not so published with P.D. No. 755.

12. Defendants Lobregat, *et al*. and COCOFED, *et al*. and Ballares, *et al.* admit that the PCA used public funds x x x in the total amount of ₱150 million, to purchase the FUB shares amounting to 72.2% of the authorized capital stock of the FUB, although the **PCA was later reimbursed from the coconut levy funds** and that the PCA subscription in the increased capitalization of the FUB, which was later renamed the x x x (UCPB), came from the said coconut levy funds x x x.

13. Pursuant to the May 25, 1975 Agreement, out of the 72.2% shares of the authorized and the increased capital stock of the FUB (later UCPB), entirely paid for by PCA, 64.98% of the shares

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were placed in the name of the "PCA for the benefit of the coconut farmers" and 7,22% were given to defendant Cojuangco. The remaining 27.8% shares of stock in the FUB which later became the UCPB were not covered by the two (2) agreements referred to in item no. 6, par. (a) and (b) above.

"There were shares forming part of the aforementioned 64.98% which were later sold or transferred to non-coconut farmers.

14. Under the May 27, 1975 Agreement, defendant Cojuangco's equity in the FUB (now UCPB) was ten percent (10%) of the shares of stock acquired by the PCA for the benefit of the coconut farmers.

15. That the fully paid 95.304 shares of the FUB, later the UCPB, acquired by defendant x x x Cojuangco, Jr. pursuant to the May 25, 1975 Agreement were paid for by the PCA in accordance with the terms and conditions provided in the said Agreement.

16. Defendants Lobregat, *et al.* and COCOFED, *et al.* and Ballares, *et al.* admit that the affidavits of the coconut farmers (specifically, Exhibit "1-Farmer" to "70-Farmer") uniformly state that:

a. they are coconut farmers who sold coconut products;
b. in the sale thereof, they received COCOFUND receipts pursuant to R.A. No. 6260;
c. they registered the said COCOFUND receipts; and
d. by virtue thereof, and under R.A. No. 6260, P.D. Nos. 755, 961 and 1468, they are allegedly entitled to the subject UCPB shares.

but subject to the following qualifications:

a. there were other coconut farmers who received UCPB shares although they did not present said COCOFUND receipt because the PCA distributed the unclaimed UCPB shares not only to those who already received their UCPB shares in exchange for their COCOFUND receipts but also to the coconut farmers determined by a national census conducted pursuant to PCA administrative issuances;

b. [t]here were other affidavits executed by Lobregat, Eleazar, Ballares and Aldeguer relative to the said distribution of the

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unclaimed UCPB shares; and

c. the coconut farmers claim the UCPB shares by virtue of their compliance not only with the laws mentioned in item (d) above but also with the relevant issuances of the PCA such as, PCA Administrative Order No. 1, dated August 20, 1975 (Exh. "298-Farmer"); PCA Resolution No. 033-78 dated February 16, 1978….

The plaintiff did not make any admission as to the foregoing qualifications.

17. Defendants Lobregat, *et al*. and COCOFED, *et al*. and Ballares, *et al.* claim that the UCPB shares in question have legitimately become the private properties of the 1,405,366 coconut farmers solely on the basis of their having acquired said shares in compliance with R.A. No. 6260, P.D. Nos. 755, 961 and 1468 and the administrative issuances of the PCA cited above.

18. On the other hand, defendant … Cojuangco, Jr. claims ownership of the UCPB shares, which he holds, solely on the basis of the two Agreements…. (Emphasis and words in brackets added.)

On July 11, 2003, the Sandiganbayan issued the assailed PSJ-A, ruling in favor of the Republic, disposing insofar as pertinent as follows:[21]

WHEREFORE, in view of the foregoing, we rule as follows:

x x x x x x x x x

C. Re: MOTION FOR PARTIAL SUMMARY JUDGMENT (RE: EDUARDO M. COJUANGCO, JR.) dated September 18, 2002 filed by plaintiff.

1. Sec. 1 of P.D. No. 755 did not validate the Agreement between PCA and defendant Eduardo M. Cojuangco, Jr. dated May 25, 1975 nor did it give the Agreement the binding force of a law because of the non-publication of the said Agreement.

2. Regarding the questioned transfer of the shares of stock of FUB (later UCPB) by PCA to defendant Cojuangco or the

[21] PSJ-A, pp. 15, 54-55, 80-83; *rollo*, pp. 193, 231-232, 257-60.

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so-called "Cojuangco UCPB shares" which cost the PCA more than Ten Million Pesos in CCSF in 1975, we declare, that the transfer of the following FUB/UCPB shares to defendant Eduardo M. Cojuangco, Jr. was not supported by valuable consideration, and therefore null and void:

a. The 14,400 shares from the "Option Shares";

b. Additional Bank Shares Subscribed and Paid by PCA, consisting of:

1. Fifteen Thousand Eight Hundred Eighty-Four (15,884) shares out of the authorized but unissued shares of the bank, subscribed and paid by PCA;

2. Sixty Four Thousand Nine Hundred Eighty (64,980) shares of the increased capital stock subscribed and paid by PCA; and

3. Stock dividends declared pursuant to paragraph 5 and paragraph 11 (iv) (d) of the Agreement.

**3. The above-mentioned shares of stock of the FUB/UCPB transferred to defendant Cojuangco are hereby declared conclusively owned by the plaintiff Republic of the Philippines.**

4. The UCPB shares of stock of the alleged fronts, nominees and dummies of defendant Eduardo M. Cojuangco, Jr. which form part of the 72.2% shares of the FUB/UCPB paid for by the PCA with public funds later charged to the coconut levy funds, particularly the CCSF, belong to the plaintiff Republic of the Philippines as their true and beneficial owner.

Let trial of this Civil Case proceed with respect to the issues which have not been disposed of in this Partial Summary Judgment. For this purpose, the plaintiff's Motion Ad Cautelam to Present Additional Evidence dated March 28, 2001 is hereby GRANTED.[22] (Emphasis and underlining added.)

As earlier explained, the core issue in this instant petition is Part C of the dispositive portion in PSJ-A declaring the 7.22%

[22] PSJ-A, pp. 15, 54-55, 80-83; *rollo*, pp. 193, 231-32, 257-60.

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FUB (now UCPB) shares transferred to Cojuangco, plus the other shares paid by the PCA as "***conclusively***" owned by the Republic. Parts A and B of the same dispositive portion have already been finally resolved and adjudicated by this Court in *Cocofed v. Republic* on January 24, 2012.[23]

From PSJ-A, Cojuangco moved for partial reconsideration but the Sandiganbayan, by Resolution[24] of December 28, 2004, denied the motion.

Hence, the instant petition.

**The Issues**

Cojuangco's petition formulates the issues in question form, as follows:[25]

a. Is the acquisition of the [so-called Cojuangco, Jr. UCPB shares] by petitioner Cojuangco x x x "not supported by valuable consideration and, therefore, null and void"?

b. Did the Sandiganbayan have jurisdiction, in Civil Case No. 0033-A, an "ill-gotten wealth" case brought under [EO] Nos. 1 and 2, to declare the [Cojuangco UCPB shares] acquired by virtue of the Pedro Cojuangco, *et al*. Agreement and/or the PCA Agreement null and void because "not supported by valuable consideration"?

c. Was the claim that the acquisition by petitioner Cojuangco of shares representing 7.2% of the outstanding capital stock of FUB (later UCPB) "not supported by valuable consideration", a "claim" pleaded in the complaint and may therefore be the basis of a "summary judgment" under Section 1, Rule 35 of the Rules of Court?

d. By declaring the [Cojuangco UCPB shares] as "not supported by valuable consideration, and therefore, null and void", did the Sandiganbayan effectively nullify the PCA Agreement? May the Sandiganbayan nullify the PCA Agreement when the parties to the Agreement, namely: x x x concede its validity? If the PCA Agreement be deemed "null and void", should not the FUB (later UCPB) shares

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[23] *COCOFED v. Republic*, G.R. Nos. 177857-58 & 178193, January 24, 2012.

[24] *Rollo,* pp. 361-400.

[25] *Id.* at 42-43.

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revert to petitioner Cojuangco (under the PCA Agreement) or to Pedro Cojuangco, *et al*. x x x? Would there be a basis then, even assuming the absence of consideration x x x, to declare 7.2% UCPB shares of petitioner Cojuangco as "conclusively owned by the plaintiff Republic of the Philippines"?[26]

**The Court's Ruling**

**I**

**THE SANDIGANBAYAN HAS JURISDICTION OVER THE SUBJECT MATTER OF THE SUBDIVIDED AMENDED COMPLAINTS, INCLUDING THE SHARES ALLEGEDLY ACQUIRED BY COJUANGCO BY VIRTUE OF THE PCA AGREEMENTS.**

The issue of jurisdiction over the subject matter of the subdivided amended complaints has peremptorily been put to rest by the Court in its January 24, 2012 Decision in *COCOFED v. Republic.* There, the Court, citing Regalado[27] and settled jurisprudence, stressed the following interlocking precepts: Subject matter jurisdiction is conferred by law, not by the consent or acquiescence of any or all of the parties. In turn, the issue on whether a suit comes within the penumbra of a statutory conferment is determined by the allegations in the complaint, regardless of whether or not the suitor will be entitled to recover upon all or part of the claims asserted.

The Republic's material averments in its complaint subdivided in CC No. 0033-A included the following:

CC No. 0033-A

12. Defendant Eduardo M. Cojuangco, Jr. served as a public officer during the Marcos administration. During the period of his incumbency as a public officer, he acquired assets, funds and other property grossly and manifestly disproportionate to his salaries, lawful income and income from legitimately acquired property.

13. Defendant Eduardo M. Cojuangco, Jr., taking undue advantage of his association, influence, connection, and acting in unlawful concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, AND

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[26] *Id*.

[27] 1 Regalado, *REMEDIAL LAW COMPENDIUM 11* (6th revised ed., 1997).

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THE INDIVIDUAL DEFENDANTS, embarked upon devices, schemes and stratagems, to unjustly enrich themselves at the expense of Plaintiff and the Filipino people, such as when he –

a) manipulated, beginning the year 1975 with the active collaboration of Defendants x x x Maria Clara Lobregat, Danilo Ursua [*etc.*], the purchase by . . . (PCA) of 72.2% of the outstanding capital stock of the x x x (FUB) which was subsequently converted into a universal bank named x x x (UCPB) through the use of the Coconut Consumers Stabilization Fund (CCSF) being initially in the amount of ₱85,773,100.00 in a manner contrary to law and to the specific purposes for which said coconut levy funds were imposed and collected under P.D. 276, and with sinister designs and under anomalous circumstances, to wit:

(i) Defendant Eduardo Cojuangco, Jr. coveted the coconut levy funds as a cheap, lucrative and risk-free source of funds with which to exercise his private option to buy the controlling interest in FUB; thus, claiming that the 72.2% of the outstanding capital stock of FUB could only be purchased and transferred through the exercise of his "personal and exclusive action [option] to acquire the 144,000 shares" of the bank, Defendant Eduardo M. Cojuangco, Jr. and PCA, x x x executed on May 26, 1975 a purchase agreement which provides, among others, for the payment to him in fully paid shares as compensation thereof 95,384 shares worth ₱1,444,000.00 with the further condition that he shall manage and control the bank as Director and President for a term of five (5) years renewable for another five (5) years and to designate three (3) persons of his choice who shall be elected as members of the Board of Directors of the Bank;

(ii) to legitimize *a posteriori* his highly anomalous and irregular use and diversion of government funds to advance his own private and commercial interests, Defendant Eduardo Cojuangco, Jr. caused the issuance by Defendant Ferdinand E. Marcos of PD 755 (a) declaring that the coconut levy funds shall not be considered special and fiduciary and trust funds and do not form part of the general funds of the National Government, conveniently repealing for that purpose a series of previous decrees, PDs 276 and 414, establishing the character of the coconut levy funds as special, fiduciary,

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trust and governmental funds; (b) confirming the agreement between Defendant Eduardo Cojuangco, Jr. and PCA on the purchase of FUB by incorporating by reference said private commercial agreement in PD 755;

(iii) To further consolidate his hold on UCPB, Defendant Eduardo Cojuangco, Jr. imposed as consideration and conditions for the purchase that (a) he gets one out of every nine shares given to PCA, and (b) he gets to manage and control UCPB as president for a term of five (5) years renewable for another five (5) years;

(iv) To perpetuate his opportunity to deal with and make use of the coconut levy funds x x x Cojuangco, Jr. caused the issuance by Defendant Ferdinand E. Marcos of an unconstitutional decree (PD 1468) requiring the deposit of all coconut levy funds with UCPB, interest free to the prejudice of the government.

(v) In gross violation of their fiduciary positions and in contravention of the goal to create a bank for the coconut farmers of the country, the capital stock of UCPB as of February 25, 1986 was actually held by the defendants, their lawyers, factotum and business associates, thereby finally gaining control of the UCPB by misusing the names and identities of the so-called "more than one million coconut farmers."

14. The acts of Defendants, singly or collectively, and/or in unlawful concert with one another, constitute gross abuse of official position and authority, flagrant breach of public trust and fiduciary obligations, brazen abuse of right and power, and unjust enrichment, violation of the constitution and laws of the Republic of the Philippines, to the grave and irreparable damage of Plaintiff and the Filipino people.[28]

In no uncertain terms, the Court has upheld the Sandiganbayan's assumption of jurisdiction over the subject matter of Civil Case Nos. 0033-A and 0033-F.[29] The Court wrote:

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[28] *Rollo*, pp. 488-493.

[29] *COCOFED v. Republic*, G.R. Nos. 177857-58 & 178193, January 24, 2012.

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Judging from the allegations of the defendants' illegal acts thereat made, it is fairly obvious that both CC Nos. 0033-A and CC 0033-F partake, in the context of EO Nos. 1, 2 and 14, series of 1986, the nature of ill-gotten wealth suits. Both deal with the recovery of sequestered shares, property or business enterprises claimed, as alleged in the corresponding basic complaints, to be ill-gotten assets of President Marcos, his cronies and nominees and acquired by taking undue advantage of relationships or influence and/or through or as a result of improper use, conversion or **diversion** of government funds or property. Recovery of these assets— determined as shall hereinafter be discussed as *prima facie* ill-gotten—falls within the unquestionable jurisdiction of the Sandiganbayan.[30]

P.D. No. 1606, as amended by R.A. 7975 and E.O. No. 14, Series of 1986, vests the Sandiganbayan with, among others, original jurisdiction over civil and criminal cases instituted pursuant to and in connection with E.O. Nos. 1, 2, 14 and 14-A. Correlatively, the PCGG Rules and Regulations defines the term *"Ill-Gotten Wealth"* as *"any asset, property, business enterprise or material possession of persons within the purview of {E.O.} Nos. 1 and 2, acquired by them directly, or indirectly thru* ***dummies, nominees, agents, subordinates and/or business associates*** *by any of the following means or similar schemes"*;

> (1) Through misappropriation, conversion, misuse or malversation of public funds or raids on the public treasury;
>
> (2) x x x
>
> (3) By the illegal or fraudulent conveyance or disposition of assets belonging to the government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations;
>
> (4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation in any business enterprise or undertaking;
>
> (5) Through the establishment of agricultural, industrial or commercial monopolies or other combinations and/or by the issuance, promulgation and/or implementation of decrees and

[30] *Id.*; citing *San Miguel Corporation v. Sandiganbayan*, G.R. Nos. 104637-38, September 14, 2000, 340 SCRA 289.

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orders intended to benefit particular persons or special interests; and

(6) By taking undue advantage of official position, authority, relationship or influence for personal gain or benefit. (Emphasis supplied)

Section 2(a) of E.O. No. 1 charged the PCGG with the task of assisting the President in "*[T]he recovery of all ill-gotten wealth accumulated by former … [President] Marcos, his immediate family, relatives, subordinates and close associates … including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through* ***nominees****, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship.*" Complementing the aforesaid Section 2(a) is Section 1 of E.O. No. 2 decreeing the freezing of all assets "*in which the [Marcoses] their close relatives, subordinates, business associates, dummies, agents or nominees have any interest or participation*."

The Republic's averments in the amended complaints, particularly those detailing the alleged wrongful acts of the defendants, sufficiently reveal that the subject matter thereof comprises the recovery by the Government of ill-gotten wealth acquired by then President Marcos, his cronies or their associates and dummies through the unlawful, improper utilization or diversion of coconut levy funds aided by P.D. No. 755 and other sister decrees. President Marcos himself issued these decrees in a brazen bid to legalize what amounts to private taking of the said public funds.

x x x x x x x x x

There was no actual need for Republic, as plaintiff *a quo*, to adduce evidence to show that the Sandiganbayan has jurisdiction over the subject matter of the complaints as it leaned on the averments in the initiatory pleadings to make visible the jurisdiction of the Sandiganbayan over the ill-gotten wealth complaints. As previously discussed, a perusal of the allegations easily reveals the sufficiency of the statement of matters disclosing the claim of the government against the coco levy funds and the assets acquired directly or indirectly through said funds as ill-gotten wealth. Moreover, the Court finds no rule that directs the plaintiff to first prove the subject matter jurisdiction of the court before which the complaint is filed. Rather, such burden falls on the shoulders of defendant in the hearing

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of a motion to dismiss anchored on said ground or a preliminary hearing thereon when such ground is alleged in the answer.

x x x x x x x x x

Lest it be overlooked, this Court has already decided that the sequestered shares are *prima facie* ill-gotten wealth rendering the issue of the validity of their sequestration and of the jurisdiction of the Sandiganbayan over the case beyond doubt. In the case of *COCOFED v. PCGG*, We stated that:

> It is of course not for this Court to pass upon the factual issues thus raised. That function pertains to the Sandiganbayan in the first instance. For purposes of this proceeding, all that the Court needs to determine is whether or not there is *prima facie* justification for the sequestration ordered by the PCGG. The Court is satisfied that there is. **The cited incidents, given the public character of the coconut levy funds, place petitioners COCOFED and its leaders and officials, at least *prima facie*, squarely within the purview of Executive Orders Nos. 1, 2 and 14,** as construed and applied in **BASECO,** to wit:
>
> "1. that ill-gotten properties (were) amassed by the leaders and supporters of the previous regime;
>
> "a. more particularly, that '(i) Ill-gotten wealth was accumulated by x x x Marcos, his immediate family, relatives, subordinates and close associates, x x x (and) business enterprises and entities (came to be) owned or controlled by them, during x x x (the Marcos) administration, directly or through nominees, *by taking undue advantage of their public office and using their powers, authority, influence, connections or relationships*';
>
> "b. otherwise stated, that '*there are assets and properties purportedly pertaining to [the Marcoses], their close relatives, subordinates, business associates, dummies, agents or nominees which had been or were acquired by them directly or indirectly, through or as a result of the improper or illegal use of funds or properties owned by the Government x x x or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their office, authority, influence, connections or relationship, resulting in their unjust enrichment x x x*;

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> x x x x x x x x x

> 2. The petitioners' claim that the assets acquired with the coconut levy funds are privately owned by the coconut farmers is founded on certain provisions of law, to wit [Sec. 7, RA 6260 and Sec. 5, Art. III, PD 1468]… (Words in bracket added; italics in the original).

> x x x x x x x x x

E.O. 1, 2, 14 and 14-A, it bears to stress, were issued precisely to effect the recovery of ill-gotten assets amassed by the Marcoses, their associates, subordinates and cronies, or through their nominees. Be that as it may, it stands to reason that persons listed as associated with the Marcoses refer to those in possession of such ill-gotten wealth but holding the same in behalf of the actual, albeit undisclosed owner, to prevent discovery and consequently recovery. Certainly, it is well-nigh inconceivable that ill-gotten assets would be distributed to and left in the hands of individuals or entities with obvious traceable connections to Mr. Marcos and his cronies. The Court can take, as it has in fact taken, judicial notice of schemes and machinations that have been put in place to keep ill-gotten assets under wraps. These would include the setting up of layers after layers of shell or dummy, but controlled, corporations[31] or manipulated instruments calculated to confuse if not altogether mislead would-be investigators from recovering wealth deceitfully amassed at the expense of the people or simply the fruits thereof. Transferring the illegal assets to third parties not readily perceived as Marcos cronies would be another. So it was that in *PCGG v. Pena*, the Court, describing the rule of Marcos as a "*well entrenched plundering regime of twenty years*," noted the magnitude of the past regime's organized pillage and the ingenuity of the plunderers and pillagers with the assistance of experts and the best legal minds in the market.[32]

Prescinding from the foregoing premises, there can no longer be any serious challenge as to the Sandiganbayan's subject matter jurisdiction. And in connection therewith, the Court wrote in *COCOFED v. Republic*, that the instant petition

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[31] *Id.*; citing *Yuchengco v. Sandiganbayan*, G.R. No. 149802, January 20, 2006, 479 SCRA 1.

[32] *Id.*

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shall be decided separately and should not be affected by the January 24, 2012 Decision, "*save for determinatively legal issues directly addressed*" therein.[33] Thus:

> We clarify that PSJ-A is subject of another petition for review interposed by Eduardo Cojuangco, Jr., in G.R. No. 180705 entitled, *Eduardo M. Cojuangco, Jr. v. Republic of the Philippines*, which shall be decided separately by this Court. Said petition should accordingly not be affected by this Decision **save for determinatively legal issues directly addressed herein**.[34] (Emphasis Ours.)

We, therefore, reiterate our holding in *COCOFED v. Republic* respecting the Sandiganbayan's jurisdiction over the subject matter of Civil Case No. 0033-A, including those matters whose adjudication We shall resolve in the present case.

## II

## PRELIMINARILY, THE AGREEMENT BETWEEN THE PCA AND EDUARDO M. COJUANGCO, JR. DATED MAY 25, 1975 CANNOT BE ACCORDED THE STATUS OF A LAW FOR THE LACK OF THE REQUISITE PUBLICATION.

It will be recalled that Cojuangco's claim of ownership over the UCPB shares is hinged on two contract documents the respective contents of which formed part of and reproduced in their entirety in the aforecited Order[35] of the Sandiganbayan dated March 11, 2003. The first contract refers to the agreement entered into by and between Pedro Cojuangco and his group, on one hand, and Eduardo M. Cojuangco, Jr., on the other, bearing date "May 1975"[36] (hereinafter referred to as "PC-ECJ Agreement"), while the second relates to the accord between the PCA and Eduardo M. Cojuangco, Jr. dated May 25, 1975 (hereinafter referred to as "PCA-Cojuangco Agreement"). The PC-ECJ Agreement allegedly contains, *inter alia*, Cojuangco's personal and exclusive option to acquire the

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[33] *Id.*

[34] *Id.*

[35] *Rollo*, pp. 956-961.

[36] The date of the agreement was left blank.

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FUB ("UCPB") shares from Pedro and his group. The PCA-Cojuangco Agreement shows PCA's acquisition of the said option from Eduardo M. Cojuangco, Jr.

Section 1 of P.D. No. 755 incorporated, by reference, the "Agreement for the Acquisition of a Commercial Bank for the Benefit of the Coconut Farmers" executed by the PCA. Particularly, Section 1 states:

> **Section 1.** *Declaration of National Policy.* It is hereby declared that the policy of the State is to provide readily available credit facilities to the coconut farmers at preferential rates; that this policy can be expeditiously and efficiently realized by the implementation of the **"Agreement for the Acquisition of a Commercial Bank for the benefit of the Coconut Farmers" executed by the Philippine Coconut Authority, the terms of which "Agreement" are hereby incorporated by reference;** and that the Philippine Coconut Authority is hereby authorized to distribute, for free, the shares of stock of the bank it acquired to the coconut farmers under such rules and regulations it may promulgate. (Emphasis Ours.)

It bears to stress at this point that the PCA-Cojuangco Agreement referred to above in Section 1 of P.D. 755 was not reproduced or attached as an annex to the same law. And it is well-settled that laws must be published to be valid. In fact, publication is an indispensable condition for the effectivity of a law. *Tañada v. Tuvera*[37] said as much:

> Publication [of the law] is indispensable in every case x x x.
>
> x x x x x x x x x
>
> We note at this point the conclusive presumption that every person knows the law, which of course presupposes that the law has been published if the presumption is to have any legal justification at all. It is no less important to remember that Section 6 of the Bill of Rights recognizes "the right of the people to information on matters of public concern," and this certainly applies to, among others, and indeed especially, the legislative enactments of the government.
>
> x x x x x x x x x

[37] No. 63915, December 29, 1986, 146 SCRA 446, 452-454.

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We hold therefore that *all* statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity date is fixed by the legislature.

Covered by this rule are presidential decrees and executive orders promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature, or, at present, directly conferred by the Constitution. Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant also to a valid delegation.[38]

We even went further in *Tañada* to say that:

Laws must come out in the open in the clear light of the sun instead of skulking in the shadows with their dark, deep secrets. Mysterious pronouncements and rumored rules cannot be recognized as binding unless their existence and contents are confirmed by a valid publication intended to make full disclosure and give proper notice to the people. The furtive law is like a scabbarded saber that cannot feint, parry or cut unless the naked blade is drawn.[39]

The publication, as further held in *Tañada*, must be of the full text of the law since the purpose of publication is to inform the public of the contents of the law. Mere referencing the number of the presidential decree, its title or whereabouts and its supposed date of effectivity would not satisfy the publication requirement.[40]

In this case, while it incorporated the PCA-Cojuangco Agreement by reference, Section 1 of P.D. 755 did not in any way reproduce the exact terms of the contract in the decree. Neither was a copy thereof attached to the decree when published. We cannot, therefore, extend to the said Agreement the status of a law. Consequently, We join the Sandiganbayan in its holding that the PCA-Cojuangco Agreement shall be treated as an ordinary transaction between agreeing minds to be governed by contract law under the Civil Code.

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[38] *Id.*

[39] Id.

[40] *Id.*

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## III

### THE PCA-COJUANGCO AGREEMENT IS A VALID CONTRACT FOR HAVING THE REQUISITE CONSIDERATION.

In PSJ-A, the Sandiganbayan struck down the PCA-Cojuangco Agreement as void for lack of consideration/cause as required under Article 1318, paragraph 3 in relation to Article 1409, paragraph 3 of the Civil Code. The Sandiganbayan stated:

> In sum, the evidence on record relied upon by defendant Cojuangco negates the presence of: (1) his claimed personal and exclusive option to buy the 137,866 FUB shares; and (2) any pecuniary advantage to the government of the said option, which could compensate for generous payment to him by PCA of valuable shares of stock, as stipulated in the May 25, 1975 Agreement between him and the PCA.[41]

On the other hand, the aforementioned provisions of the Civil Code state:

> Art. 1318. There is no contract unless the following requisites concur:
>
> (1) Consent of the contracting parties;
> (2) Object certain which is the subject matter of the contract;
> **(3) Cause of the obligation which is established.** (Emphasis supplied)[42]
>
> Art. 1409. The following contracts are inexistent and void from the beginning:
>
> x x x x x x x x x
>
> (3) Those whose cause or object did not exist at the time of the transaction;[43]

The Sandiganbayan found and so tagged the alleged cause for the agreement in question, *i.e.*, Cojuangco's "personal and

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[41] PSJ-A, p. 74; *rollo*, p. 251.

[42] An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, Art. 1318 (1950).

[43] CIVIL CODE, Art. 1409; see also 4 Arturo M. Tolentino, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES* 629 (2002).

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exclusive option to acquire the Option Shares," as fictitious. A reading of the purchase agreement between Cojuangco and PCA, so the Sandiganbayan ruled, would show that Cojuangco was not the only seller; thus, the option was, as to him, neither personal nor exclusive as he claimed it to be. Moreover, as the Sandiganbayan deduced, that option was inexistent on the day of execution of the PCA-Cojuangco Agreement as the Special Power of Attorney executed by Cojuangco in favor of now Senator Edgardo J. Angara, for the latter to sign the PC-ECJ Agreement, was dated May 25, 1975 while the PCA-Cojuangco Agreement was also signed on May 25, 1975. Thus, the Sandiganbayan believed that when the parties affixed their signatures on the second Agreement, Cojuangco's option to purchase the FUB shares of stock did not yet exist. The Sandiganbayan further ruled that there was no justification in the second Agreement for the compensation of Cojuangco of 14,400 shares, which it viewed as exorbitant. Additionally, the Sandiganbayan ruled that PCA could not validly enter, in behalf of FUB/UCPB, into a veritable bank management contract with Cojuangco, PCA having a personality separate and distinct from that of FUB. As such, the Sandiganbayan concluded that the PCA-Cojuangco Agreement was null and void. Correspondingly, the Sandiganbayan also ruled that the sequestered FUB (UCPB) shares of stock in the name of Cojuangco are conclusively owned by the Republic.

After a circumspect study, the Court finds as inconclusive the evidence relied upon by Sandiganbayan to support its ruling that the PCA-Cojuangco Agreement is devoid of sufficient consideration. We shall explain.

Rule 131, Section 3(r) of the Rules of Court states:

Sec. 3. *Disputable presumptions*.—The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x x x x x x

(r) That there was a sufficient consideration for a contract;

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The Court had the occasion to explain the reach of the above provision in *Surtida v. Rural Bank of Malinao (Albay), Inc.*,[44] to wit:

> Under Section 3, Rule 131 of the Rules of Court, the following are disputable presumptions: (1) private transactions have been fair and regular; (2) the ordinary course of business has been followed; and (3) there was sufficient consideration for a contract. A presumption may operate against an adversary who has not introduced proof to rebut it. The effect of a legal presumption upon a burden of proof is to create the necessity of presenting evidence to meet the legal presumption or the *prima facie* case created thereby, and which if no proof to the contrary is presented and offered, will prevail. The burden of proof remains where it is, but by the presumption, the one who has that burden is relieved for the time being from introducing evidence in support of the averment, because **the presumption stands in the place of evidence unless rebutted.**
>
> **The presumption that a contract has sufficient consideration cannot be overthrown by the bare uncorroborated and self-serving assertion** of petitioners **that it has no consideration. To overcome the presumption** of consideration**, the alleged lack of consideration must be shown by preponderance of evidence.** Petitioners failed to discharge this burden x x x. (Emphasis Ours.)

The assumption that ample consideration is present in a contract is further elucidated in *Pentacapital Investment Corporation v. Mahinay*:[45]

> **Under Article 1354 of the Civil Code, it is presumed that consideration exists and is lawful unless the debtor proves the contrary. Moreover, under Section 3, Rule 131 of the Rules of Court, the following are disputable presumptions:** (1) private transactions have been fair and regular; (2) the ordinary course of business has been followed; and **(3) there was sufficient consideration for a contract**. A presumption may operate against an adversary who has not introduced proof to rebut it. The effect of a legal presumption upon a burden of proof is to create the necessity of presenting evidence to meet the legal presumption or the *prima facie* case created thereby, and which, if no proof to the contrary is presented and offered, will

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[44] G.R. No. 170563, December 20, 2006, 511 SCRA 507.

[45] G.R. Nos. 171736 & 181482, July 5, 2010, 623 SCRA 284, 303.

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prevail. The burden of proof remains where it is, but by the presumption, the one who has that burden is relieved for the time being from introducing evidence in support of the averment, because the presumption stands in the place of evidence unless rebutted.[46] (Emphasis supplied.)

The rule then is that the party who stands to profit from a declaration of the nullity of a contract on the ground of insufficiency of consideration—which would necessarily refer to one who asserts such nullity—has the burden of overthrowing the presumption offered by the aforequoted Section 3(r). Obviously then, the presumption contextually operates in favor of Cojuangco and against the Republic, as plaintiff *a quo*, which then had the burden to prove that indeed there was no sufficient consideration for the Second Agreement. The Sandiganbayan's stated observation, therefore, that based on the wordings of the Second Agreement, Cojuangco had no personal and exclusive option to purchase the FUB shares from Pedro Cojuangco had really little to commend itself for acceptance. This, as opposed to the fact that such sale and purchase agreement is memorialized in a notarized document whereby both Eduardo Cojuangco, Jr. and Pedro Cojuangco attested to the correctness of the provisions thereof, among which was that Eduardo had such option to purchase. A notarized document, *Lazaro v. Agustin*[47] teaches, "generally carries the evidentiary weight conferred upon it with respect to its due execution, and documents acknowledged before a notary public have in their favor the disputable presumption of regularity."

In *Samanilla v. Cajucom*,[48] the Court clarified that the presumption of a valid consideration cannot be discarded on a simple claim of absence of consideration, especially when the contract itself states that consideration was given:

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[46] See also *Union Bank of the Philippines v. Spouses Tiu*, G.R. Nos. 173090-91, September 7, 2011; *Great Asian Sales Center v. Court of Appeals*, 431 Phil. 293 (2002); *Fernandez v. Fernandez*, 416 Phil. 322 (2001); *Gevero v. Intermediate Appellate Court*, G.R. No. 77029, August 30, 1990, 189 SCRA 201; *Spouses Nuguid v. Court of Appeals*, 253 Phil. 207 (1989).

[47] G.R. No. 152364, April 15, 2010, 618 SCRA 298.

[48] 107 Phil. 432 (1960).

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x x x **This presumption appellants cannot overcome by a simple assertion of lack of consideration. Especially may not the presumption be so lightly set aside when the contract itself states that consideration was given, and the same has been reduced into a public instrument will all due formalities and solemnities as in this case.** (Emphasis ours.)

A perusal of the PCA-Cojuangco Agreement disclosed an express statement of consideration for the transaction:

**NOW, THEREFORE,** for and in consideration of the foregoing premises and the other terms and conditions hereinafter contained, **the parties hereby declare and affirm that their principal contractual intent is (1) to ensure that the coconut farmers own at least 60% of the outstanding capital stock of the Bank, and (2) that the SELLER shall receive compensation for exercising his personal and exclusive option to acquire the Option Shares, for transferring such shares to the coconut farmers at the option price of ₱200 per share, and for performing the management services required of him hereunder.**

x x x x x x x x x

4. **As compensation for exercising his personal and exclusive option to acquire the Option Shares and for transferring such shares to the coconut farmers, as well as for performing the management services required of him**, SELLER shall receive equity in the Bank amounting, in the aggregate, to 95,304 fully paid shares in accordance with the procedure set forth in paragraph 6 below. (Emphasis supplied.)

Applying *Samanilla* to the case at bar, the express and positive declaration by the parties of the presence of adequate consideration in the contract makes conclusive the presumption of sufficient consideration in the PCA Agreement. Moreover, the option to purchase shares and management services for UCPB was already availed of by petitioner Cojuangco for the benefit of the PCA. The exercise of such right resulted in the execution of the PC-ECJ Agreement, which fact is not disputed. The document itself is incontrovertible proof and hard evidence that petitioner Cojuangco had the right to purchase the subject FUB (now UCPB) shares. *Res ipsa loquitur*.

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The Sandiganbayan, however, pointed to the perceived "lack of any pecuniary value or advantage to the government of the said option, which could compensate for the generous payment to him by PCA of valuable shares of stock, as stipulated in the May 25, 1975 Agreement between him and the PCA."[49]

Inadequacy of the consideration, however, does not render a contract void under Article 1355 of the Civil Code:

> Art. 1355. Except in cases specified by law, lesion **or inadequacy of cause shall not invalidate a contract**, unless there has been fraud, mistake or undue influence. (Emphasis supplied.)

*Alsua-Betts v. Court of Appeals*[50] is instructive that lack of ample consideration does not nullify the contract:

> **Inadequacy of consideration does not vitiate a contract unless it is proven which in the case at bar was not, that there was fraud, mistake or undue influence.** (Article 1355, New Civil Code). We do not find the stipulated price as so inadequate to shock the court's conscience, considering that the price paid was much higher than the assessed value of the subject properties and considering that the sales were effected by a father to her daughter in which case filial love must be taken into account. (Emphasis supplied.)

*Vales v. Villa*[51] elucidates why a bad transaction cannot serve as basis for voiding a contract:

> x x x Courts cannot follow one every step of his life and extricate him from bad bargains, protect him from unwise investments, relieve him from one-sided contracts, or annul the effects of foolish acts. x x x **Men may do foolish things, make ridiculous contracts, use miserable judgment, and lose money by them – indeed, all they have in the world; but not for that alone can the law intervene and restore. There must be, in addition, a *violation* of law, the commission of what the law knows as an *actionable wrong*, before the courts are authorized to lay hold of the situation and remedy it.** (Emphasis ours.)

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[49] PSJ-A, pp. 73-74.

[50] Nos. L-46430-31, July 30, 1979, 92 SCRA 332; *Morales Development Company, Inc. v. Court of Appeals*, No. L-26572, March 28, 1969, 27 SCRA 484.

[51] 35 Phil. 769, 788 (1916).

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While one may posit that the PCA-Cojuangco Agreement puts PCA and the coconut farmers at a disadvantage, the facts do not make out a clear case of violation of any law that will necessitate the recall of said contract. Indeed, the anti-graft court has not put forward any specific stipulation therein that is at war with any law, or the Constitution, for that matter. It is even clear as day that none of the parties who entered into the two agreements with petitioner Cojuangco contested nor sought the nullification of said agreements, more particularly the PCA who is always provided legal advice in said transactions by the Government corporate counsel, and a battery of lawyers and presumably the COA auditor assigned to said agency. A government agency, like the PCA, stoops down to level of an ordinary citizen when it enters into a private transaction with private individuals. In this setting, PCA is bound by the law on contracts and is bound to comply with the terms of the PCA-Cojuangco Agreement which is the law between the parties. With the silence of PCA not to challenge the validity of the PCA-Cojuangco Agreement and the inability of government to demonstrate the lack of ample consideration in the transaction, the Court is left with no other choice but to uphold the validity of said agreements.

While consideration is usually in the form of money or property, it need not be monetary. This is clear from Article 1350 which reads:

> Art. 1350. In onerous contracts the cause is understood to be, for each contracting party, **the prestation or promise of a thing or service by the other;** in remuneratory ones, the **service or benefit which is remunerated;** and in contracts of pure beneficence, the mere liability of the benefactor. (Emphasis supplied.)

*Gabriel v. Monte de Piedad y Caja de Ahorros*[52] tells us of the meaning of consideration:

> x x x A consideration, in the legal sense of the word, is some **right, interest, benefit, or advantage** conferred upon the promisor, to which he is otherwise not lawfully entitled, **or any detriment, prejudice,**

[52] 71 Phil. 497, 501 (1941).

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**loss, or disadvantage** suffered or undertaken by the promisee other than to such as he is at the time of consent bound to suffer. (Emphasis Ours.)

The Court rules that the transfer of the subject UCPB shares is clearly supported by valuable consideration.

To justify the nullification of the PCA-Cojuangco Agreement, the Sandiganbayan centered on the alleged imaginary option claimed by petitioner to buy the FUB shares from the Pedro Cojuangco group. It relied on the phrase "in behalf of certain other buyers" mentioned in the PC-ECJ Agreement as basis for the finding that petitioner's option is neither personal nor exclusive. The pertinent portion of said agreement reads:

EDUARDO COJUANGCO, JR., Filipino, of legal age and with residence at 136 9th Street corner Balete Drive, Quezon City, represented in this act by his duly authorized attorney-in-fact, **EDGARDO J. ANGARA, for and in his own behalf and in behalf of certain other buyers**, (hereinafter collectively called the "BUYERS"); x x x.

A plain reading of the aforequoted description of petitioner as a party to the PC-ECJ Agreement reveals that petitioner is not only the buyer. He is the named buyer and there are other buyers who were unnamed. This is clear from the word "BUYERS." If petitioner is the only buyer, then his description as a party to the sale would only be "BUYER." It may be true that petitioner intended to include other buyers. The fact remains, however, that the identities of the unnamed buyers were not revealed up to the present day. While one can conjure or speculate that PCA may be one of the buyers, the fact that PCA entered into an agreement to purchase the FUB shares with petitioner militates against such conjecture since there would be no need at all to enter into the second agreement if PCA was already a buyer of the shares in the first contract. It is only the parties to the PC-ECJ Agreement that can plausibly shed light on the import of the phrase "certain other buyers" but, unfortunately, petitioner was no longer allowed to testify on the matter and was precluded from explaining the transactions because of the motion for partial summary judgment and the

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eventual promulgation of the July 11, 2003 Partial Summary Judgment.

Even if conceding for the sake of argument that PCA is one of the buyers of the FUB shares in the PC-ECJ Agreement, still it does not necessarily follow that petitioner had no option to buy said shares from the group of Pedro Cojuangco. In fact, the very execution of the first agreement undeniably shows that he had the rights or option to buy said shares from the Pedro Cojuangco group. Otherwise, the PC-ECJ Agreement could not have been consummated and enforced. The conclusion is incontestable that petitioner indeed had the right or option to buy the FUB shares as buttressed by the execution and enforcement of the very document itself.

We can opt to treat the PC-ECJ Agreement as a totally separate agreement from the PCA-Cojuangco Agreement but it will not detract from the fact that petitioner actually acquired the rights to the ownership of the FUB shares from the Pedro Cojuangco group. The consequence is he can legally sell the shares to PCA. In this scenario, he would resell the shares to PCA for a profit and PCA would still end up paying a higher price for the FUB shares. The "profit" that will accrue to petitioner may just be equal to the value of the shares that were given to petitioner as commission. Still we can only speculate as to the true intentions of the parties. Without any evidence adduced on this issue, the Court will not venture on any unproven conclusion or finding which should be avoided in judicial adjudication.

The anti-graft court also inferred from the date of execution of the special power of attorney in favor of now Senator Edgardo J. Angara, which is May 25, 1975, that the PC-ECJ Agreement appears to have been executed on the same day as the PCA-Cojuangco Agreement (dated May 25, 1975). The coincidence on the dates casts "doubts as to the existence of defendant Cojuangco's prior 'personal and exclusive' option to the FUB shares."

The fact that the execution of the SPA and the PCA-Cojuangco Agreement occurred sequentially on the same day

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cannot, without more, be the basis for the conclusion as to the non-existence of the option of petitioner. Such conjecture cannot prevail over the fact that without petitioner Cojuangco, none of the two agreements in question would have been executed and implemented and the FUB shares could not have been successfully conveyed to PCA.

Again, only the parties can explain the reasons behind the execution of the two agreements and the SPA on the same day. They were, however, precluded from elucidating the reasons behind such occurrence. In the absence of such illuminating proof, the proposition that the option does not exist has no leg to stand on.

More importantly, the fact that the PC-ECJ Agreement was executed not earlier than May 25, 1975 proves that petitioner Cojuangco had an option to buy the FUB shares *prior* to that date. Again, it must be emphasized that from its terms, the first Agreement did not create the option. It, however, proved the exercise of the option by petitioner.

The execution of the PC-ECJ Agreement on the same day as the PCA-Cojuangco Agreement more than satisfies paragraph 2 thereof which requires petitioner to exercise his option to purchase the FUB shares as promptly as practicable **after**, and not before, the execution of the second agreement, thus:

> 2. **As promptly as practicable after execution of this Agreement, the SELLER shall exercise his option to acquire the Option Shares** and SELLER shall immediately thereafter deliver and turn over to the Escrow Agent such stock certificates as are herein provided to be received from the existing stockholders of the bank by virtue of the exercise on the aforementioned option. The Escrow Agent shall thereupon issue its check in favor of the SELLER covering the purchase price for the shares delivered. (Emphasis supplied.)

The Sandiganbayan viewed the compensation of petitioner of 14,400 FUB shares as exorbitant. In the absence of proof to the contrary and considering the absence of any complaint of illegality or fraud from any of the contracting parties, then

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the presumption that "private transactions have been fair and regular"[53] must apply.

Lastly, respondent interjects the thesis that PCA could not validly enter into a bank management agreement with petitioner since PCA has a personality separate and distinct from that of FUB. Evidently, it is PCA which has the right to challenge the stipulations on the management contract as unenforceable. However, PCA chose not to assail said stipulations and instead even complied with and implemented its prestations contained in said stipulations by installing petitioner as Chairman of UCPB. Thus, PCA has waived and forfeited its right to nullify said stipulations and is now estopped from questioning the same.

In view of the foregoing, the Court is left with no option but to uphold the validity of the two agreements in question.

**IV**

**COJUANGCO IS NOT ENTITLED TO THE UCPB SHARES WHICH WERE BOUGHT WITH PUBLIC FUNDS AND HENCE, ARE PUBLIC PROPERTY.**

**The coconut levy funds were exacted for a special public purpose. Consequently, any use or transfer of the funds that directly benefits private individuals should be invalidated.**

The issue of whether or not taxpayers' money, or funds and property acquired through the imposition of taxes may be used to benefit a private individual is once again posed. Preliminarily, the instant case inquires whether the coconut levy funds, and accordingly, the UCPB shares acquired using the coconut levy funds are public funds. Indeed, the very same issue took center stage, discussed and was directly addressed in *COCOFED v. Republic*. And there is hardly any question about the subject funds' public and special character. The following excerpts from *COCOFED v. Republic*,[54] citing *Republic v. COCOFED* and related

[53] RULES OF COURT, Rule 131(p).

[54] *COCOFED v. Republic*, G.R. Nos. 177857-58 & 178193, January 24,

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cases, settle once and for all this core, determinative issue:

Indeed, We have hitherto discussed, the coconut levy was imposed in the exercise of the State's inherent power of taxation. As We wrote in *Republic v. COCOFED:*

> Indeed, **coconut levy funds partake of the nature of taxes**, which, in general, are enforced proportional contributions from persons and properties, exacted by the State by virtue of its sovereignty for the support of government and for all public needs.
>
> Based on its definition, a tax has three elements, namely: a) it is an enforced proportional contribution from persons and properties; b) it is imposed by the State by virtue of its sovereignty; and c) it is levied for the support of the government. The coconut levy funds fall squarely into these elements for the following reasons:
>
> (a) They were generated by virtue of statutory enactments imposed on the coconut farmers requiring the payment of prescribed amounts. Thus, PD No. 276, which created the … (CCSF), mandated the following:
>
> > "a. A levy, initially, of ₱15.00 per 100 kilograms of copra resecada or its equivalent in other coconut products, shall be imposed on every first sale, in accordance with the mechanics established under RA 6260, effective at the start of business hours on August 10, 1973.
> >
> > "The proceeds from the levy shall be deposited with the Philippine National Bank or any other government bank to the account of the Coconut Consumers Stabilization Fund, as a separate trust fund which shall not form part of the general fund of the government."
>
> The coco levies were further clarified in amendatory laws, specifically PD No. 961 and PD No. 1468 – in this wise:
>
> > "The Authority (PCA) is hereby empowered to impose and collect a levy, to be known as the Coconut Consumers Stabilization Fund Levy, on every one hundred kilos of

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2012; citing *Republic v. COCOFED*, G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462, 482-484.

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> copra resecada, or its equivalent … delivered to, and/or purchased by, copra exporters, oil millers, desiccators and other end-users of copra or its equivalent in other coconut products. **The levy shall be paid by such copra exporters, oil millers, desiccators and other end-users of copra or its equivalent in other coconut products** under such rules and regulations as the Authority may prescribe. Until otherwise prescribed by the Authority, the current levy being collected shall be continued."

Like other tax measures, they were not voluntary payments or donations by the people. They were enforced contributions exacted on pain of penal sanctions, as provided under PD No. 276:

> "3. Any person or firm who violates any provision of this Decree or the rules and regulations promulgated thereunder, shall, in addition to penalties already prescribed under existing administrative and special law, pay a fine of not less than ₱2,500 or more than ₱10,000, or suffer cancellation of licenses to operate, or both, at the discretion of the Court."

Such penalties were later amended thus: ….

(b) The coconut levies were imposed pursuant to the laws enacted by the proper legislative authorities of the State. Indeed, the CCSF was collected under PD No. 276, …."

(c) They were clearly imposed for a **public purpose**. **There is absolutely no question that they were collected to advance the government's avowed policy of protecting the coconut industry.** This Court takes judicial notice of the fact that the **coconut industry** is one of the great economic pillars of our nation, and coconuts and their byproducts occupy a leading position among the country's export products; ….

Taxation is done not merely to raise revenues to support the government, but also to provide means for the **rehabilitation and the stabilization of a threatened industry**, which is so affected with **public interest** as to be within the police power of the State ….

Even if the money is allocated for a **special purpose** and raised by special means, **it is still public in character**…. In

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> *Cocofed v. PCGG,* the Court observed that certain agencies or enterprises "were organized and financed with revenues derived from coconut levies imposed under a succession of law of the late dictatorship … with deposed Ferdinand Marcos and his cronies as the suspected authors and chief beneficiaries of the resulting coconut industry monopoly." The Court continued: "…. **It cannot be denied that the coconut industry is one of the major industries supporting the national economy.** It is, therefore, the State's concern to make it a strong and secure source **not only** of the livelihood of a significant segment of the population, **but also of export earnings the sustained growth of which is one of the imperatives of economic stability**. (Emphasis Ours.)

The following parallel doctrinal lines from *Pambansang Koalisyon ng mga Samahang Magsasaka at Manggagawa sa Niyugan (PKSMMN) v. Executive Secretary*[55] came next:

> The Court was satisfied that the coco-levy funds were raised pursuant to law to support a proper governmental purpose. They were raised with the use of the police and taxing powers of the State for the benefit of the coconut industry and its farmers in general. The COA reviewed the use of the funds. The Bureau of Internal Revenue (BIR) treated them as public funds and the very laws governing coconut levies recognize their public character.
>
> The Court has also recently declared that the coco-levy funds are in the nature of taxes and can only be used for public purpose. Taxes are enforced proportional contributions from persons and property, levied by the State by virtue of its sovereignty for the support of the government and for all its public needs. Here, the coco-levy funds were imposed pursuant to law, namely, R.A. 6260 and P.D. 276. The funds were collected and managed by the PCA, an independent government corporation directly under the President. And, as the respondent public officials pointed out, the pertinent laws used the term levy, which means to tax, in describing the exaction.
>
> Of course, unlike ordinary revenue laws, R.A. 6260 and P.D. 276 did not raise money to boost the government's general funds but to provide means for the rehabilitation and stabilization of a threatened industry, the coconut industry, which is so affected with public

[55] G.R. Nos. 147036-37 & 147811, April 10, 2012.

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interest as to be within the police power of the State. The funds sought to support the coconut industry, one of the main economic backbones of the country, and to secure economic benefits for the coconut farmers and far workers. The subject laws are akin to the sugar liens imposed by Sec. 7(b) of P.D. 388, and the oil price stabilization funds under P.D. 1956, as amended by E.O. 137.

From the foregoing, it is at once apparent that any property acquired by means of the coconut levy funds, such as the subject UCPB shares, should be treated as public funds or public property, subject to the burdens and restrictions attached by law to such property. *COCOFED v. Republic*, delved into such limitations, thusly:

**We have ruled time and again that taxes are imposed only for a public purpose. "They cannot be used for purely private purposes or for the exclusive benefit of private persons." When a law imposes taxes or levies from the public, with the intent to give undue benefit or advantage to private persons, or the promotion of private enterprises, that law cannot be said to satisfy the requirement of public purpose.** In *Gaston v. Republic Planters Bank*, the petitioning sugar producers, sugarcane planters and millers sought the distribution of the shares of stock of the Republic Planters Bank (RPB), alleging that they are the true beneficial owners thereof. In that case, the investment, *i.e.*, the purchase of RPB, was funded by the deduction of PhP 1.00 per picul from the sugar proceeds of the sugar producers pursuant to P.D. No. 388. In ruling against the petitioners, the Court held that to rule in their favor would contravene the general principle that revenues received from the imposition of taxes or levies "cannot be used for purely private purposes or for the exclusive benefit of private persons." The Court amply reasoned that the sugar stabilization fund is to "be utilized for the benefit of the ***entire sugar industry, and all its components, stabilization of the domestic market including foreign market, the industry being of vital importance to the country's economy and to national interest.***"

Similarly in this case, the coconut levy funds were sourced from forced exactions decreed under P.D. Nos. 232, 276 and 582, among others, with the end-goal of developing the entire coconut industry. **Clearly, to hold therefore, even by law, that the revenues received from the imposition of the coconut levies be used purely for private purposes to be owned by private individuals in their private capacity**

**and for their benefit, would contravene the rationale behind the imposition of taxes or levies.**

**Needless to stress, courts do not, as they cannot, allow by judicial fiat the conversion of special funds into a private fund for the benefit of private individuals. In the same vein, We cannot subscribe to the idea of what appears to be an indirect – if not exactly direct – conversion of special funds into private funds, *i.e.*, by using special funds to purchase shares of stocks, which in turn would be distributed for free to private individuals. Even if these private individuals belong to, or are a part of the coconut industry, the free distribution of shares of stocks purchased with special public funds to them, nevertheless cannot be justified.** The ratio in *Gaston,* as articulated below, applies *mutatis mutandis* to this case:

> The stabilization fees in question are levied by the State … for a special purpose – that of "financing the growth and development of the sugar industry and all its components, stabilization of the domestic market including the foreign market." **The fact that the State has taken possession of moneys pursuant to law is sufficient to constitute them as state funds even though they are held for a special purpose….**
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> ***That the fees were collected from sugar producers [etc.], and that the funds were channeled to the purchase of shares of stock in respondent Bank do not convert the funds into a trust fund for their benefit nor make them the beneficial owners of the shares so purchased. It is but rational that the fees be collected from them since it is also they who are benefited from the expenditure of the funds derived from it.*** ….[56]

In this case, the coconut levy funds were being exacted from copra exporters, oil millers, desiccators and other end-users of copra or its equivalent in other coconut products.[57] Likewise so, the funds here were channeled to the purchase of the shares of stock in UCPB.

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[56] *COCOFED v. Republic,* G.R. Nos. 177857-58 & 178193, January 24, 2012; citing *Gaston v. Republic Planters Bank*, No. 77194, March 15, 1988, 158 SCRA 626, 633-34; see also *Republic v. COCOFED*, G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462, 485-486.

[57] *Republic v. COCOFED*, G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462, 483; citing P.D. No. 961, 1976, Art. III, Sec. 1; P.D. No. 1468, 1978, Art. III, Sec. 1.

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Drawing a clear parallelism between *Gaston* and this case, the fact that the coconut levy funds were collected from the persons or entities in the coconut industry, among others, does not and cannot entitle them to be beneficial owners of the subject funds – or more bluntly, owners thereof in their private capacity. ***Parenthetically, the said private individuals cannot own the UCPB shares of stocks so purchased using the said special funds of the government.***[58] (Emphasis Ours.)

As the coconut levy funds partake of the nature of taxes and can only be used for public purpose, and importantly, for the purpose for which it was exacted, *i.e.*, the development, rehabilitation and stabilization of the coconut industry, they cannot be used to benefit—whether directly or indirectly— private individuals, be it by way of a commission, or as the subject Agreement interestingly words it, compensation. Consequently, Cojuangco cannot stand to benefit by receiving, in his private capacity, 7.22% of the FUB shares without violating the constitutional caveat that public funds can only be used for public purpose. Accordingly, the 7.22% FUB (UCPB) shares that were given to Cojuangco shall be returned to the Government, to be used "only for the benefit of all coconut farmers and for the development of the coconut industry."[59]

The ensuing are the underlying rationale for declaring, as unconstitutional, provisions that convert public property into private funds to be used ultimately for personal benefit:

… not only were the laws unconstitutional for decreeing the distribution of the shares of stock for free to the coconut farmers and therefore negating the public purposed declared by P.D. No. 276, *i.e.*, to stabilize the price of edible oil and to protect the coconut industry. They likewise reclassified the coconut levy fund as *private fund*, to be owned by *private individuals* in their *private capacities*, contrary to the original purpose for the creation of such fund. To compound the situation, the offending provisions effectively removed the coconut levy fund away from the cavil of public funds which normally can be paid out only pursuant to an appropriation made

[58] *COCOFED v. Republic*, G.R. Nos. 177857-58 & 178193, January 24, 2012.

[59] *Id.*

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by law. The conversion of public funds into private assets was illegally allowed, in fact mandated, by these provisions. Clearly therefore, the pertinent provisions of P.D. Nos. 755, 961 and 1468 are unconstitutional for violating Article VI, Section 29 (3) of the Constitution. In this context, the distribution by PCA of the UCPB shares purchased by means of the coconut levy fund – a special fund of the government – to the coconut farmers is, therefore, void.[60]

It is precisely for the foregoing that impels the Court to strike down as unconstitutional the provisions of the PCA-Cojuangco Agreement that allow petitioner Cojuangco to personally and exclusively own public funds or property, the disbursement of which We so greatly protect if only to give light and meaning to the mandates of the Constitution.

As heretofore amply discussed, taxes are imposed only for a public purpose.[61] They must, therefore, be used for the benefit of the public and not for the exclusive profit or gain of private persons.[62] Otherwise, grave injustice is inflicted not only upon the Government but most especially upon the citizenry—the taxpayers—to whom We owe a great deal of accountability.

In this case, out of the 72.2% FUB (now UCPB) shares of stocks PCA purchased using the coconut levy funds, the May 25, 1975 Agreement between the PCA and Cojuangco provided for the transfer to the latter, by way of compensation, of 10% of the shares subject of the agreement, or a total of 7.22% fully paid shares. In sum, Cojuangco received public assets – in the form of FUB (UCPB) shares with a value then of ten million eight hundred eighty-six thousand pesos (PhP 10,886,000) in 1975, paid by coconut levy funds. In effect, Cojuangco received the aforementioned asset as a result of the PCA-Cojuangco Agreement, and exclusively benefited himself by owning property acquired using solely public funds. Cojuangco, no less, admitted that the PCA paid, out of the CCSF, the entire acquisition price

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[60] *Id.*

[61] *Id.*; citing *Republic v. Sandiganbayan*, G.R. No. 118661, January 22, 2007, 512 SCRA 25.

[62] *Id.*

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for the 72.2% option shares.[63] This is in clear violation of the prohibition, which the Court seeks to uphold.

We, therefore, affirm, on this ground, the decision of the Sandiganbayan nullifying the shares of stock transfer to Cojuangco. Accordingly, the UCPB shares of stock representing the 7.22% fully paid shares subject of the instant petition, with all dividends declared, paid or issued thereon, as well as any increments thereto arising from, but not limited to, the exercise of pre-emptive rights, shall be reconveyed to the Government of the Republic of the Philippines, which as We previously

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[63] *Republic v. COCOFED*, G.R. Nos. 147062-64, Dec. 14, 2001; 372 SCRA 462, 477.

In the present case before the Court, it is not disputed that the money used to purchase the sequestered UCPB shares came from the Coconut Consumer Stabilization Fund (CCSF), otherwise known, as the coconut levy funds.

This fact was *plainly admitted* by private respondent's counsel, Atty. Teresita J. Hebosa, during the Oral Arguments held on April 17, 2001 in Baguio City, as follows:

"Justice Panganiban:

"In regard to the theory of the Solicitor General that the funds used to purchase [both] the original 28 million and the subsequent 80 million came from the CCSF, Coconut Consumers Stabilization Fund, do you agree with that?

"Atty. Herbosa:

"Yes, Your Honor.

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"Justice Panganiban:

"So it seems that the parties [have] agreed up to that point that the funds used to purchase 72% of the former First United Bank came from the Coconut Consumer Stabilization Fund?

"Atty. Herbosa:

"Yes, Your Honor."

FN40. Transcript of Oral Arguments, April 17, 2001, pp. 171, 173. During the same Oral Argument, Private Respondent Cojuangco similarly admitted that the "entire amount" paid for the shares had come from the Philippine Coconut Authority. TSN, p. 115.

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clarified, shall "be used only for the benefit of all coconut farmers and for the development of the coconut industry."[64]

But apart from the stipulation in the PCA-Cojuangco Agreement, more specifically paragraph 4 in relation to paragraph 6 thereof, providing for the transfer to Cojuangco for the UCPB shares adverted to immediately above, other provisions are valid and shall be enforced, or shall be respected, if the corresponding prestation had already been performed. Invalid stipulations that are independent of, and divisible from, the rest of the agreement and which can easily be separated therefrom without doing violence to the manifest intention of the contracting minds do not nullify the entire contract.[65]

**WHEREFORE,** Part C of the appealed Partial Summary Judgment in Sandiganbayan Civil Case No. 0033-A is **AFFIRMED** with modification. As **MODIFIED**, the dispositive portion in Part C of the Sandiganbayan's Partial Summary Judgment in Civil Case No. 0033-A, shall read as follows:

C. Re: MOTION FOR PARTIAL SUMMARY JUDGMENT (RE: EDUARDO M. COJUANGCO, JR.) dated September 18, 2002 filed by Plaintiff.

1. Sec. 1 of P.D. No. 755 did not validate the Agreement between PCA and defendant Eduardo M. Cojuangco, Jr. dated May 25, 1975 nor did it give the Agreement the binding force of a law because of the non-publication of the said Agreement.

2. The Agreement between PCA and defendant Eduardo M. Cojuangco, Jr. dated May 25, 1975 is a valid contract for having the requisite consideration under Article 1318 of the Civil Code.

3. The transfer by PCA to defendant Eduardo M. Cojuangco, Jr. of 14,400 shares of stock of FUB (later UCPB) from the

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[64] *COCOFED v. Republic*, G.R. Nos. 177857-58 & 178193, January 24, 2012.

[65] CIVIL CODE, Art. 1420 specifically provides, "[I]n case of a divisible contract, if the illegal terms can be separated from the legal ones, the latter may be enforced."

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"Option Shares" and the additional FUB shares subscribed and paid by PCA, consisting of

a. Fifteen Thousand Eight Hundred Eighty-Four (15,884) shares out of the authorized but unissued shares of the bank, subscribed and paid by PCA;

b. Sixty Four Thousand Nine Hundred Eighty (64,980) shares of the increased capital stock subscribed and paid by PCA; and

c. Stock dividends declared pursuant to paragraph 5 and paragraph 11 (iv) (d) of the PCA-Cojuangco Agreement dated May 25, 1975 or the so-called "Cojuangco-UCPB shares"

is declared unconstitutional, hence null and void.

4. The above-mentioned shares of stock of the FUB/UCPB transferred to defendant Cojuangco are hereby declared conclusively owned by the Republic of the Philippines to be used only for the benefit of all coconut farmers and for the development of the coconut industry, and ordered reconveyed to the Government.

5. The UCPB shares of stock of the alleged fronts, nominees and dummies of defendant Eduardo M. Cojuangco, Jr. which form part of the 72.2% shares of the FUB/UCPB paid for by the PCA with public funds later charged to the coconut levy funds, particularly the CCSF, belong to the plaintiff Republic of the Philippines as their true and beneficial owner.

Accordingly, the instant petition is hereby **DENIED**.

Costs against petitioner Cojuangco.

**SO ORDERED.**

*Sereno, C.J., Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza,* and *Leonen, JJ.,* concur.

*Carpio, Leonardo-de Castro,* and *Peralta, JJ.,* no part.

*Brion, Reyes,* and *Perlas-Bernabe, JJ.,* on leave.