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THIRD DIVISION

[G.R. No. 98467. July 10, 1992]

NATIONAL DEVELOPMENT CO. and AMERICAN EXPRESS BANK, LTD., *petitioners, vs.* **HON. COURT OF APPEALS, HON. IGNACIO M. CAPULONG, VICENTE T. TAN, VICTAN AND COMPANY, INC., TRANSWORLD INVESTMENT CORP., FIRST INTERNATIONAL INVESTMENT CO., INC., FAR EAST PETROLEUM AND MINERAL CORP., and PHILCONTRUST INTERNATIONAL CORP.,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION FOR RECONVEYANCE OF SHARES OF STOCK BASED ON CONSTRUCTIVE OR IMPLIED TRUST; CAN ONLY EXIST AGAINST THE ORIGINAL ASSIGNEES IN CASE AT BAR.— "On the question of cause of action, the Court notes that as the complaint itself avers, the petitioners' shares in the Continental Bank were assigned to the firms already above specified (which Herminio Disini allegedly controlled), and not to the Central Bank. It is therefore fairly obvious that if any claim for reconveyance may be prosecuted, it should be prosecuted against the Disini companies." This observation becomes even more appropriate in the case of the petitioners because they did not have any transaction with either the private respondents or the Disini companies. NDC and AMEX derived their rights from the CB and the NDC, respectively. Except for the allegation in paragraph 22 of private respondents' complaint in Civil Case No. 15707 that petitioners herein, having actual or constructive notice of the fraudulent acquisition of the shares by the Disini corporations, are obligated under the principle of constructive trust to reconvey to them such shares including the corresponding stock/cash dividends earned, there is nothing therein that even remotely intimates that petitioners had violated any of the private respondents' right. This is an essential element of a cause of action.

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2. ID.; ID.; JOINDER OF INDISPENSABLE PARTIES; MANDATORY; PLEADING AMENDED TO INCLUDE INDISPENSABLE PARTY; CONSEQUENCE OF FAILURE TO IMPLEAD INDISPENSABLE PARTY; CASE AT BAR. — This Court cannot divine the reason or cause why private respondents did not implead the original assignees in Civil Case No. 15707. For purposes of reconveyance of the questioned shares of stock, they are the indispensable parties. No final determination of the case between the private respondents and the impleaded agents (CB, NDC and AMEX) can be had without the said original assignees because the reliefs prayed for against said impleaded defendants are precisely anchored on the voidability or nullity of the deeds of assignments flowing from contracts to which these impleaded defendants are not parties. Joinder of indispensable parties is mandatory and a complaint may be dismissed if an indispensable party is not impleaded in the complaint. Section 7, Rule 3 of the Rules of Court provides: "SECTION 7. Compulsory joinder of indispensable parties. — Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants." When an indispensable party is not before the court, the action should be dismissed. Ordinarily, however, a reasonable opportunity to amend the pleading must be given, and the action should not be dismissed, except when the plaintiff fails or refuses to include said party, or the latter cannot be sued.

3. CIVIL LAW; PRESCRIPTION; OWNERSHIP OF MOVABLES; POSSESSOR IS IN GOOD FAITH; POSSESSOR IS IN BAD FAITH; MOVABLE POSSESSED THROUGH A CRIME; IN CASE AT BAR, ACTION FOR RECONVEYANCE NOT IMPRESCRIPTIBLE.— The rule anent prescription on recovery of movables (shares of stock in this case) is expressed in Article 1140 of the Civil Code, which we quote: Art. 1140. Actions to recover movables shall prescribe eight years from the time the possession thereof is lost, unless the possessor had acquired the ownership by prescription for a less period, according to Article 1132, and without prejudice to the provisions of Articles 559, 1505, and 1133. As it provides, Article 1140 is subject to the provisions of Articles 1132 and 1133 of the Code, governing acquisitive prescription, in relation to Articles 559 and 1505 thereof. Under

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Article 1132: Art. 1132. The ownership of movables prescribes through uninterrupted possession for four years in good faith. The ownership of personal property also prescribes through uninterrupted possession for eight years, without need of any other condition. With regard to the right of the owner to recover personal property lost or of which he has been illegally deprived, as well as with respect to movables acquired in a public sale, fair, or market, or from a merchant's store the provisions of Articles 559 and 1505 of this Code shall be observed. Acquisitive prescription sets in after uninterrupted possession of four years, provided there is good faith, and upon the lapse of eight years, if bad faith is present. Where, however, the thing was acquired through a crime, the offender can not acquire ownership by prescription under Article 1133, which we quote: Art. 1133. Movables possessed through a crime can never be acquired through prescription by the offender. Please note that under the above Article, the benefits of prescription are denied to the offender; nonetheless, if the thing has meanwhile passed to a subsequent holder, prescription begins to run (four or eight years, depending on the existence of good faith). For purposes of extinctive prescription vis-a-vis movables, we therefore understand the periods to be: 1. Four years, if the possessor is in good faith; 2. Eight years in all other cases, except where the loss was due to a crime in which case, the offender can not acquire the movable by prescription, and an action to recover it from him is imprescriptible. It is evident, for purposes of the complaint in question, that the petitioners had at most eight years within which to pursue a reconveyance, reckoned from the loss of the shares in 1977, when the petitioner Vicente Tan executed the various agreements in which he conveyed the same in favor of the Executive Consultants, Inc., Orobel Property Management, Inc., and Antolum Trading Corporation. We are hard put to say, in this regard, that the petitioners' action is after all, imprescriptible pursuant to the provisions of Article 1133 of the Civil Code, governing actions to recover loss by means of a crime. For one thing, the complaint was not brought upon this theory. For another, there is nothing there that suggests that the loss of the shares was indeed made possible by a criminal act, other than simple bad faith and probably abuse of right.

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4. ID.; ID.; INTERRUPTION OF PRESCRIPTION; PRESCRIPTION NOT INTERRUPTED BY PERIOD DURING WHICH AUTHORITARIAN RULE WAS IN FORCE; CASE AT BAR.— We can not accept the petitioners' contention that the period during which authoritarian rule was in force had interrupted prescription and that the same began to run only on February 25, 1986, when the Aquino government took power. It is true that under Article 1154: Art. 1154. The period during which the obligee was prevented by a fortuitous event from enforcing his right is not reckoned against him. Fortuitous events have the effect of tolling the period of prescription. However, we can not say, as a universal rule, that the period from September 21, 1972 through February 25, 1986 involves a *force majeure*. Plainly, we can not box in the 'dictatorial' period within the term without distinction, and without, by necessity, suspending all liabilities, however demandable, incurred during that period, including perhaps those ordered by this Court to be paid. While this Court is cognizant of acts of the last regime, especially political acts, that might have indeed precluded the enforcement of liability against that regime and/or its minions, the Court is not inclined to make quite a sweeping pronouncement, considering especially the unsettling effects such a pronouncement is likely to bring about. It is our opinion that claims should be taken on a case-to-case basis. This selective rule is compelled, among others, by the fact that not all those imprisoned or detained by the past dictatorship were true political oppositionists, or, for that matter, innocent of any crime or wrongdoing. Indeed, not a few of them were manipulators and scoundrels. We are, therefore, convinced, from Vicente Tan's very behavior, that detention was not an impediment to a judicial challenge, and the fact of the matter was that he was successful in obtaining judicial assistance. Under these circumstances, we can not declare detention, or authoritarian rule for that matter, as a fortuitous event insofar as he was concerned, that interrupted prescription. To be sure, there is nothing in the petition which would remotely suggest, assuming that Vicente Tan could not have freely and intelligently acted during the period of martial rule, that his co-petitioners Victan & Company, Inc., Transworld Investment Corporation, First International Investment Company, Inc., Far East Petroleum & Minerals Corporation, and Philcontrust International Corporation, could not have

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similarly acted during the martial law regime and shortly thereafter. As far as they are therefore concerned, the Court has even better reason to invoke prescription because none of them acted and none now claims that it could not have acted.

GUTIERREZ, JR., *J., dissenting:*

1. CIVIL LAW; CONSTRUCTIVE OR IMPLIED TRUST; USED WHENEVER NECESSARY TO SATISFY THE DEMANDS OF JUSTICE; CAUSE OF ACTION BASED THEREON VALID IN CASE AT BAR.— If NDC and AMEX had notice of the infirmities attendant to the sale which never materialized for want of consideration, then they become constructive trustees of the disputed shares and, at the very least, should justify in court their alleged valid ownership of the shares acquired by them. There being a wrongful dispossession of valuable properties, the transferee to whom the dispossessor turned over the properties has to prove its alleged good faith in the face of allegations that it was not a *bona fide* buyer. I believe there is a valid cause of action based on constructive or implied trust which the trial court may examine for purposes of granting legal and equitable relief. x x x. The precedents cited by the respondents show that in constructive trust, the courts reserve the freedom to apply a remedy to whatever knavery human ingenuity can invent. Constructive trust is used whenever necessary to satisfy the demands of justice; its application is limited only by the inventiveness of men who find new ways to enrich themselves unjustly by grasping what should not belong to them.

2. ID.; PRESCRIPTION; ISSUE OF PRESCRIPTION A MATTER OF DEFENSE BEST THRESHED OUT DURING HEARING ON THE MERITS; IN CASE AT BAR, PERIOD DURING WHICH AUTHORITARIAN RULE WAS IN FORCE INTERRUPTED PRESCRIPTION OF ACTION TO ENFORCE CLAIM.— Apart from the above exposition of the substantive requirements on prescription, herein respondents submit that this issue is a matter of defense which could be better appreciated in a hearing on the merits. After all prescription is not a mere mathematical computation of a finite period. It involves situations and events that will clearly establish whether a particular plaint is time-barred. In this

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particular case there are abundant allegations spread out in the complaint recounting events that could only show that private respondents could not have filed the action for recovery, considering that the highest official of the land was respondent Vicente Tan's mortal enemy. Citing the dissenting opinion of Justice Edgardo L. Paras in G.R. No. 90365 the correct period is five (5) years with certain exclusions in the nature of *force majeure*. Thus, he opined, 'The correct period is five years under Art. 1149 of the Civil Code and not four years under Art. 1146 of the same Code. And from this period of five years must be excluded the period during which the action could not be brought because of a *force majeure* (Art. 1154 of the Civil Code), as exemplified by the dictatorial regime which ruled the Philippines during the past administration. The period of prescription therefore should be counted from Feb. 25, 1986 when the present administration of President Corazon Aquino took over the control of the government. The action having been brought on Jan. 31, 1987, it is clear that counted from Feb. 25, 1986, less than a year had elapsed, and therefore the action has not yet prescribed.' Indeed, if viewed even in another view point and considering that the suit filed with the regional trial court for reconveyance was based on constructive trust as earlier discussed, said action prescribes in ten years counted from the release of respondent Vicente Tan from detention. Thus, the present complaint dated December 27, 1977 has not prescribed." Under the circumstances of this case, presentation of evidence, and not an automatic computation of number of years, months, and days, is necessary.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner NDC.

Sycip, Salazar, Hernandez & Gatmaitan for petitioner American Express Bank, Ltd.

Marcial O.T. Balgos for private respondents.

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D E C I S I O N

DAVIDE, JR., *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to set aside the 11 April 1991 Resolution[1] of a Division of Five of the Court of Appeals which reconsidered and nullified the 30 April 1990 Decision[2] of the former Sixth Division thereof in C.A.-G.R. SP No. 18865[3] directing the Regional Trial Court (Branch 134, Makati) of the National Capital Judicial Region to dismiss private respondents' complaint in Civil Case No. 15707.

The antecedents in this case are not disputed.

On 13 January 1987, private respondents filed a complaint in Civil Case No. 15707 against the Central Bank of the Philippines (CB), the National Development Company (NDC) and the American Express Bank, Ltd. (AMEX) for the reconveyance of shares of stock in the International Corporate Bank (Interbank), with damages and a prayer for the issuance of a restraining order.[4] They alleged, *inter alia,* that:

(a) as of June 1974, plaintiffs (the herein private respondents) were the owners of some 359,615 shares of stocks, with a par value of ₱100.00 per share, which constitute 75% of the outstanding shares, and controlling interest in Continental Bank, later named Interbank;

(b) on 15 and 16 June 1974, plaintiff Vicente T. Tan and other key officials of Continental Bank were arrested by military agents on the strength of Arrest Search and Seizure Orders

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[1] Per Associate Justice Emeterio C. Cui, concurred in by Associate Justices Ricardo J. Francisco and Alicia V. Sempio Diy with Associate Justices Jose C. Campos, Jr. and Nicolas Lapeña, Jr. dissenting; *Rollo,* 46-51.

[2] Per Associate Justice Nicolas P. Lapeña, Jr., concurred in by Associate Justices Jose C. Campos, Jr. and Emeterio C. Cui.

[3] Entitled "*National Development Company and American Express Bank, Ltd. vs. Hon. Ignacio Capulong, et al.*"

[4] *Rollo,* 68-83.

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(ASSOs) issued by then Defense Secretary Juan Ponce Enrile based on charges filed before the PC Criminal Investigation Service and alleging, among others, illegal transactions committed in the Continental Bank;

(c) on 17 June 1974 and several days thereafter, a composite team of PC-CIS-NISA agents under orders from General Fabian Ver raided the Continental Bank offices in Binondo, Manila, seized books, securities records and other vital credit documents and sealed the bank's security vault, the office of the bank's Vice President and the room of the Chief Accountant;

(d) the series of raids conducted by the military agents triggered a bank "run" on Continental Bank causing chaos and confusion on its banking operations;

(e) defendant CB issued an order forbidding the Continental Bank from doing business effective at the beginning of office hours on 24 June 1974, and designating the Director of the Department of Commercial and Savings Banks as statutory receiver; thereafter, it ordered a special examination of Continental Bank's financial condition as of 24 June 1974;

(f) in a final report, dated 12 August 1974, on the special examination conducted, the Supervising Bank Examiner of the CB reported that the "Continental Bank is in an insolvent position in view of which, its continuance in business under the present conditions, may no longer be safe to its creditors and depositing public" but added that "the Bank may be allowed to reorganize under an entirely new management provided there is an infusion of fresh funds to the Bank as well as the conversion and/or restructuring of certain liabilities into equity and/or long-term liabilities (sic)";

(g) while still under military custody and detention, Vicente T. Tan, on his own behalf and on behalf of his affiliate companies, was pressured into signing three (3) agreements dated 2 February 1977, 12 May 1977 and 5 July 1977 under which he transferred and conveyed by way of assignment their aforesaid 359,615 shares of stock, including other assets, interests and properties in Continental Bank, to three (3) corporations, alleged fronts for Herminio Disini, namely Executive Consultants, Inc., Orobel Property Management,

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Inc. and Antolum International Trading Corporation, in consideration of the latter's assumption of certain specified liabilities and obligations of Tan and his group of companies;

(h) unknown to Vicente T. Tan, whose facilities of verification were severely restricted by his detention, the combined paid-up capital of the three (3) aforementioned assignee-corporations at the time of the assignment was only P2.5-Million, which made them inherently incapable of performing the obligations they had assumed;

(i) by reason of the fraudulent acquisition by the Disini corporation of the 359,615 shares, a constructive trust has been constituted on said shares in favor of plaintiffs;

(j) the execution of the aforementioned agreements paved the way for the reopening of the Continental Bank on 19 September 1977 under a new name, the International Corporate Bank (Interbank), and under the management of the Herdis Group, which became the owner of the bank's controlling stock; this also paved the way for the release from military custody, on 27 December 1977, of Vicente T. Tan and other officers of the Continental Bank and the subsequent dismissal of the criminal cases filed against them;

(k) Interbank's new management totally ignored the existing rules and regulations of the CB by milking the deposits with said Interbank dry through huge borrowings by the Disini Group of companies, thereby pushing said Bank to the brink of total collapse; had it not been for the huge infusion of funds by the CB in the form of emergency loans and advances, Interbank would have completely collapsed;

(l) since the CB is prohibited from acquiring shares of any kind and participating in the ownership or management of any enterprise, either directly or indirectly, it assigned the emergency loans and advances extended to the Interbank to the National Development Company (NDC) as a result of which the latter executed the corresponding promissory note payable in 25 years, without interest, in favor of said CB; the said loans and advances were then converted into equity thereby enabling the NDC to acquire 99% of Interbank's outstanding shares of stock from the Disini Group, including the 359,615 shares earlier mentioned, and the corresponding stock/cash dividends earned;

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(m) defendant American Express Bank, Ltd. (AMEX) acquired from defendant NDC 40% of the outstanding shares of stock of Interbank, but before the acquisition by AMEX of the said interest, "it was placed on notice of the infirmities of the transfer of the shares of plaintiffs in Continental Bank to the former owners of Interbank" and despite said notice AMEX proceeded to convert, with the CB's approval, its exposures to the Philippine Government into equity in Interbank;

(n) defendants CB, NDC and AMEX, having actual or constructive notice of the fraudulent acquisition by the aforesaid Disini corporations of the 359,615 shares of stock of plaintiffs, are obligated under the principle of constructive trust to reconvey to plaintiffs the latter's original controlling shareholdings in the Continental Bank including the stock/ cash dividends earned;

(o) in view of the CB's arbitrariness, Tan had been subjected to physical suffering, mental anguish, besmirched reputation and social humiliation and said bank is therefore liable for moral damages; plaintiffs were likewise compelled to engage the services of counsel for a stipulated fee.

The amounts of moral damages and attorney's fees sought were not specified; however, in their prayer, they asked the Court that the CB be ordered to pay them moral damages and attorney's fees in such amount as may be proved during the trial.

On 19 January 1987, the trial court, per Judge Ignacio Capulong, issued a temporary restraining order prohibiting petitioners AMEX and NDC from disposing of or transferring their shares of stock in Interbank.[5]

On 26 January 1987, NDC and AMEX moved to dismiss the complaint alleging that: (a) the trial court has no jurisdiction over the subject or nature of the action which is intra-corporate in nature; (b) the complaint states no cause of action against

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[5] Per Judge Ignacio Capulong, CA decision of 30 April 1990, 3; *Rollo*, 62.

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them; (c) there is another action pending between the same parties for the same cause; and (d) the cause of action, if any, is barred by prescription. They likewise opposed the private respondents' application for preliminary injunction.[6] Judge Capulong denied the motion in an order dated 6 February 1987.[7]

On 27 February 1987, petitioners' co-defendant in Civil Case No. 15707, the CB, filed its separate motion to dismiss, but Judge Capulong likewise denied it in his Order dated 15 May 1987.[8] Its motion for reconsideration having been denied, the CB filed with the Court of Appeals a petition for *certiorari* which was docketed as C.A.-G.R. SP. No. 12706.[9]

On 14 April 1989, the NDC and AMEX filed a supplemental motion to dismiss on the ground that Tan, *et al*. had not paid the correct amount of filing fees. The said motion was also denied by Judge Capulong in the Order dated 8 August 1989.[10]

On 29 September 1989, NDC and AMEX filed with the Court of Appeals a petition for *certiorari* and prohibition under Rule 65 challenging the adverse orders of the trial court; they prayed for the dismissal of Civil Case No. 15707 and for the issuance of a restraining order to enjoin further proceedings therein. The case was docketed as C.A.-G.R. SP No. 18865.[11] As grounds therefore, they alleged that:

> "a) A complaint for recovery of property on the ground of duress in the transaction by which such property had been sold or assigned cannot be maintained against its present holder for value, where the original assignments remain valid, no action for the annulment thereof having been filed against the original assignees.

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[6] *Rollo*, 62.

[7] *Id*., 14.

[8] CA's Decision dated 30 April 1990, 3; *Id*., 62.

[9] *Id*.

[10] *Id*.

[11] *Id*., 15.

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b) An action to recover corporate shares of stock by one claiming to be a stockholder against another stockholder of the same corporation is within the original and exclusive jurisdiction of the Securities and Exchange Commission (SEC).

c) Where the action to annul a contract of assignment based on duress has prescribed, no further suit to recover the property assigned may be maintained by the alleged assignor based on the same ground.

d) The doctrine of constructive trust on which the complaint is based is not applicable to the case at bar.

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g) Private respondents purposely omitted in the prayer of their complaint below the value of the Interbank shares of stock sought to be recovered to evade payment of the correct filing fees, hence the complaint cannot be deemed filed, and the lower court did not acquire jurisdiction over the suit."

The then former Sixth Division of the Court of Appeals gave the petition due course and issued a restraining order.

Earlier however, more specifically on 5 April 1989, the respondent Court (First Division) promulgated its decision in the petition filed by the CB, CA-G.R. SP No. 12706, granting the petition and ordering the dismissal of the complaint in Civil Case No. 15707 insofar as the CB is concerned.[12] Herein private respondents then filed with this Court a petition for review to set aside the said decision, which was docketed as G.R. No. 90365.[13]

On 30 April 1990, the Sixth Division of the respondent Court promulgated its Decision in C.A.-G.R. SP No. 18865 granting the petition and ordering the dismissal of Civil Case No. 15707.[14] It ruled that: (a) NDC and AMEX are not the original assignees, but subsequent transferees, of the questioned shares of stock; Tan, *et al*. should have filed the complaint for annulment of the

[12] *Rollo*, 62.

[13] AMEX's Manifestation filed on 5 May 1992.

[14] *Rollo*, 60-67.

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assignments, which they claimed to have been made under duress, against the original assignees. Assuming that duress did exist, it merely made the assignments voidable; without a judgment for annulment on that ground, the assignments remain valid and binding and may even be ratified under Article 1390 of the Civil Code. There being no annulment declared by a competent court, NDC's and AMEX's title of ownership over the shares cannot be collaterally attacked. Besides, Civil Case No. 15707 is for reconveyance, not annulment; the complaint does not allege any act or omission by NDC and AMEX in derogation of any legal right belonging to Tan, *et al*. Hence, the complaint fails to state a cause of action. (b) The requisites of implied trust, an argument invoked in the complaint, are not present. The original assignees were not fiduciaries with respect to the questioned shares of stocks. The shares involved were assigned to them for value; said assignees did not acquire, misapply or misappropriate the same by mistake or fraud. The complaint makes no allegation that the shares were obtained by fraud or mistake. (c) The cause of action, if any, is clearly barred by prescription. If indeed the consent of Tan to the deeds of assignment was obtained through force or duress at a time when he was under military detention and custody, such duress ceased when he was eventually released by the military on 27 December 1977. Pursuant to Article 1391 of the Civil Code, he should have filed the complaint for annulment within four (4) years from such release. (d) Finally, Civil Case No. 15707 is an action involving corporate shares of stock between parties who both claim to be stockholders of the same corporation. Pursuant to Section 5 of P.D. No. 902-A, it is the Securities and Exchange Commission which has original and exclusive jurisdiction thereon.

Private respondents herein moved to reconsider said decision. An undated resolution penned by Justice Nicolas Lapeña, Jr.,[15] denied the motion; however, Associate Justice Emeterio Cui indicated his dissent and submitted a dissenting opinion.[16] Pursuant to Section 11 of the Judiciary Reorganization Act of

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[15] *Rollo,* 52.

[16] *Id*., 53-58.

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1980 and Section 6, Rule I of the Revised Internal Rules of Court of Appeals, two (2) Members of the Court, Associate Justices Ricardo J. Francisco and Alicia V. Sempio Diy, were designated to sit temporarily in a Division of Five. The two concurred with the dissenting opinion of Justice Cui. Thereafter, the Division of Five promulgated on 11 April 1991 the challenged resolution which granted the motion for reconsideration and dismissed the petition.[17] This Division of Five of respondent Court held that Civil Case No. 15707 states a sufficient cause of action based on a constructive or implied trust; prescription is a matter of defense that is best resolved by a resort to the parties' evidence; and, finally, no intra-corporate matters are involved in the case since private respondents are neither claiming nor enforcing the rights incident to corporate stock ownership, such as the right to vote at stockholders meetings, elect and remove directors, adopt and repeal by-laws and other rights under the Corporation Code.

Unable to accept the Resolution, NDC and AMEX filed the herein petition on 14 June 1991. They aver that the respondent Court erred:

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"4.1 x x x in holding, or holding in effect, that a seller claiming to have sold or assigned property to another 'under duress,' may bring suit to recover it from a subsequent purchaser with whom he has no privity, and even though the original sale or assignment remains valid.

4.2 x x x in holding that prescription as ground (*sic*) for dismissal should be resolved at the trial, even though the determinative facts appear on the face of the complaint.

4.3 x x x in holding that an action for reconveyance of corporate shares, between parties claiming to be stockholders of the same corporation, is not a case within the SEC's jurisdiction.

4.4 x x x in not holding that the trial court in any case acquired no jurisdiction over the complaint for reconveyance, where

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[17] Annex "A" of Petition; *Rollo*, 45-51.

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plaintiffs failed and refused to pay the required filing fees therefor.

4.5 x x x in not holding that the trial court has issued an injunction with grave abuse of discretion amounting to lack of jurisdiction."[18]

After private respondents filed their Comment[19] to the petition on 22 August 1991 in compliance with the Resolution of 3 July 1991,[20] this Court gave due course to the petition and required the parties to file their respective Memoranda. Private respondents filed their Memorandum on 24 October 1991.[21] Petitioners AMEX and NDC filed their separate Memoranda on 30 October 1991 and 12 November 1991, respectively.[22]

On 22 November 1991, private respondents filed a Reply to petitioners' Memorandum[23] to which they attached as Annex "A"[24] thereof a certification by the Clerk of Court of the Regional Trial Court of Makati to the effect that on 7 May 1990, private respondent Tan paid the additional amount of ₱183,967.55 for the docketing and other fees.

The petition is impressed with merit.

As to the lack of cause of action and prescription, the fate of the private respondents had long been sealed.

In the 18 March 1991 decision of this Court entitled "*Vicente T. Tan, et al. versus The Honorable Court of Appeals, et al.*,"[25] docketed as G.R. No. 90365 and resulting from the private respondents' petition for review of the respondent Court's decision

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[18] Petition, 13-14.

[19] *Rollo*, 88-101.

[20] *Id.*, 85.

[21] *Id.*, 117, *et seq.*

[22] *Id.*, 131, *et seq.*; 168, *et seq.*

[23] *Id.*, 198, *et seq.*

[24] *Id.*, 201.

[25] 195 SCRA 355 [1991].

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in C.A.-G.R. SP No. 12706 granting the CB's petition for *certiorari* and ordering the dismissal of Civil Case No. 15707, this Court ruled that: (a) a cause of action for reconveyance of the shares in question can only exist against the original assignees and (b) private respondents' cause of action, if any, had already prescribed. As to the first, it states:

"On the question of cause of action, the Court notes that as the complaint itself avers, the petitioners' shares in the Continental Bank were assigned to the firms already above specified (which Herminio Disini allegedly controlled), and not to the Central Bank. It is therefore fairly obvious that if any claim for reconveyance may be prosecuted, it should be prosecuted against the Disini companies."[26]

This observation becomes even more appropriate in the case of the petitioners because they did not have any transaction with either the private respondents or the Disini companies. NDC and AMEX derived their rights from the CB and the NDC, respectively. Except for the allegation in paragraph 22 of private respondents' complaint in Civil Case No. 15707 that petitioners herein, having actual or constructive notice of the fraudulent acquisition of the shares by the Disini corporations, are obligated under the principle of constructive trust to reconvey to them such shares including the corresponding stock/cash dividends earned, there is nothing therein that even remotely intimates that petitioners had violated any of the private respondents' right. This is an essential element of a cause of action.[27]

This Court cannot divine the reason or cause why private respondents did not implead the original assignees in Civil Case No. 15707. For purposes of reconveyance of the questioned shares of stock, they are the indispensable parties. No final determination of the case between the private respondents and the impleaded agents (CB, NDC and AMEX) can be had without the said original assignees because the reliefs prayed for against said impleaded defendants are precisely anchored on the

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[26] At pages 369-370.

[27] *Ma-ao Sugar Central Co. vs. Barrios*, 79 Phil. 666 [1947].

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voidability or nullity of the deeds of assignments flowing from contracts to which these impleaded defendants are not parties.

Joinder of indispensable parties is mandatory and a complaint may be dismissed if an indispensable party is not impleaded in the complaint. Section 7, Rule 3 of the Rules of Court provides:

"SECTION 7. *Compulsory joinder of indispensable parties.* — Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants."

When an indispensable party is not before the court, the action should be dismissed.[28] Ordinarily, however, a reasonable opportunity to amend the pleading must be given, and the action should not be dismissed, except when the plaintiff fails or refuses to include said party, or the latter cannot be sued.[29]

As to prescription, this Court, in said G.R. No. 90365, ruled:

"The next question is whether or not any action for reconveyance has nevertheless prescribed, on the bases or provisions governing reconveyance.

The rule anent prescription on recovery of movables (shares of stock in this case) is expressed in Article 1140 of the Civil Code, which we quote:

> Art. 1140. Actions to recover movables shall prescribe eight years from the time the possession thereof is lost, unless the possessor had acquired the ownership by prescription for a less period, according to Article 1132, and without prejudice to the provisions of articles 559, 1505, and 1133.

As it provides, Article 1140 is subject of the provisions of Articles 1132 and 1133 of the Code, governing acquisitive prescription, in relation to Articles 559 and 1505 thereof. Under Article 1132:

> Art. 1132. The ownership of movables prescribes through uninterrupted possession for four years in good faith.

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[28] *People vs. Hon. Rodriguez,* 106 Phil. 325 [1959].

[29] *Cortez vs. Avila,* 101 Phil. 205 [1957].

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> The ownership of personal property also prescribes through uninterrupted possession for eight years, without need of any other condition.
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> With regard to the right of the owner to recover personal property lost or of which he has been illegally deprived, as well as with respect to movables acquired in a public sale, fair, or market, or from a merchant's store the provisions of articles 559 and 1505 of this Code shall be observed.

acquisitive prescription sets in after uninterrupted possession of four years, provided there is good faith, and upon the lapse of eight years, if bad faith is present. Where, however, the thing was acquired through a crime, the offender can not acquire ownership by prescription under Article 1133, which we quote:

> Art. 1133. Movables possessed through a crime can never be acquired through prescription by the offender.

Please note that under the above Article, the benefits of prescription are denied to the offender; nonetheless, if the thing has meanwhile passed to a subsequent holder, prescription begins to run (four or eight years, depending on the existence of good faith).[30]

For purposes of extinctive prescription *vis-a-vis* movables, we therefore understand the periods to be:

1. Four years, if the possessor is in good faith;
2. Eight years in all other cases, except where the loss was due to a crime in which case, the offender can not acquire the movable by prescription, and an action to recover it from him is imprescriptible.

It is evident, for purposes of the complaint in question, that the petitioners had at most eight years within which to pursue a reconveyance, reckoned from the loss of the shares in 1977, when the petitioner Vicente Tan executed the various agreements in which he conveyed the same in favor of the Executive Consultants, Inc., Orobel Property Management, Inc., and Antolum Trading Corporation.

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[30] Citing IV PARAS, C*ivil Code of the Philippines Annotated*, 1985 ed., 30.

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We are hard put to say, in this regard, that the petitioners' action is after all, imprescriptible pursuant to the provisions of Article 1133 of the Civil Code, governing actions to recover loss by means of a crime. For one thing, the complaint was not brought upon this theory. For another, there is nothing there that suggests that the loss of the shares was indeed made possible by a criminal act, other than simple bad faith and probably abuse of right:

xxx xxx xxx

Since the complaint was filed on January 13, 1987, ten years more or less after the petitioners transferred the shares in question, it is clear that the petitioners have come to court too late.

We can not accept the petitioners' contention that the period during which authoritarian rule was in force had interrupted prescription and that the same began to run only on February 25, 1986, when the Aquino government took power. It is true that under Article 1154:

> Art. 1154. The period during which the obligee was prevented by a fortuitous event from enforcing his right is not reckoned against him.

fortuitous events have the effect of tolling the period of prescription. However, we can not say, as a universal rule, that the period from September 21, 1972 through February 25, 1986 involves a *force majeure*. Plainly, we can not box in the 'dictatorial' period within the term without distinction, and without, by necessity, suspending all liabilities, however demandable, incurred during that period, including perhaps those ordered by this Court to be paid. While this Court is cognizant of acts of the last regime, especially political acts, that might have indeed precluded the enforcement of liability against that regime and/or its minions, the Court is not inclined to make quite a sweeping pronouncement, considering especially the unsettling effects such a pronouncement is likely to bring about. It is our opinion that claims should be taken on a case-to-case basis. This selective rule is compelled, among others, by the fact that not all those imprisoned or detained by the past dictatorship were true political oppositionists, or, for that matter, innocent of any crime or wrongdoing. Indeed, not a few of them were manipulators and scoundrels.

The petitioner Vicente Tan claims that from June, 1974 through December, 1977, he was under detention; that sometime in August,

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1977, the Central Bank lodged six criminal cases against him, along with several others, with Military Commission No. 5 in connection with alleged violation of the Central Bank Act, falsification of documents, and estafa, that while in detention, he was made to execute various agreements in which he conveyed the shares of stock in question; and that '[u]nder the foregoing factual setting . . . it would be foolhardy on the part of petitioners to institute . . . [any] action for reconveyance . . .'

The records show, however, that although under detention, Vicente Tan:

1. Commenced, in July, 1976, Civil Case No. 103359 of (*sic*) the defunct Court of First Instance of Manila, 'to mandatorily enjoin the Central Bank as receiver of Continental Bank, to takeover from 'NISA' the control and management and assets of Vicente Tan and his affiliate corporations';
2. Was ably represented by competent counsel, Atty. Norberto Quisumbing, throughout;
3. Filed with this Court a petition to stop the trial of the criminal cases pending against him with the Military Commission No. 5 and succeeded in obtaining a temporary restraining order.

On top of those facts abovementioned, he:

1. Asked the Court of First Instance to order the Central Bank 'to proceed to rehabilitate Continental Bank by extending to it such emergency loans and advances as may be needed for its rehabilitation . . .
2. Wrote, on July 15, 1977, the Central Bank expressing his approval in the reopening and rehabilitation of Continental Bank.

We are, therefore, convinced, from Vicente Tan's very behavior, that detention was not an impediment to a judicial challenge, and the fact of the matter was that he was successful in obtaining judicial assistance. Under these circumstances, we can not declare detention, or authoritarian rule for that matter, as a fortuitous event insofar as he was concerned, that interrupted prescription.

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To be sure, there is nothing in the petition which would remotely suggest, assuming that Vicente Tan could not have freely and intelligently acted during the period of martial rule, that his co-petitioners Victan & Company, Inc., Transworld Investment Corporation, First International Investment Company, Inc., Far East Petroleum & Minerals Corporation, and Philcontrust International Corporation, could not have similarly acted during the martial law regime and shortly thereafter. As far as they are therefore concerned, the Court has even better reason to invoke prescription because none of them acted and none now claims that it could not have acted."[31]

Private respondents' motion to reconsider the above decision, especially insofar as it dismissed Civil Case No. 15707, was denied with *FINALITY* in the resolution of this Court of 8 May 1991.[32]

The foregoing disquisitions render unnecessary further action on the remaining assigned errors in this petition.

WHEREFORE, the petition is *GRANTED*. The Resolution of respondent Court in C.A.-G.R. SP No. 18865 promulgated on 11 April 1991 is hereby *REVERSED* and *SET ASIDE* while its Decision therein, promulgated on 30 April 1990, is *REINSTATED*.

Costs against the private respondents.

SO ORDERED.

Bidin and *Romero, JJ.,* concur.

Gutierrez, Jr., J., see dissenting opinion.

Feliciano, J., no part. One of parties is represented by my former firm.

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[31] At pages 364-369.

[32] *Rollo* of G.R. No. 90365, 474.

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DISSENTING OPINION

GUTIERREZ, JR., *J.*:

I find the situation in this case basically unfair and arbitrary. A remedy in law should not be denied.

Respondent Vicente Tan was arrested on June 15, 1974 on the basis of a martial law Arrest, Search and Seizure Order (ASSO). While under military detention, he insists that he was forced to transfer 359,615 shares of stock in a commercial bank to three corporations owned by Herminio Disini. Unknown to Tan, the paid-up capital of the buyers was only ₱2.5 million. The buyers were unable to pay the consideration for the forced sale. Eventually, the bank was sold to petitioners National Development Co. (NDC) and American Express Bank Ltd. (AMEX).

The only issue before us is whether or not the efforts of Mr. Tan to recover his lost properties should be summarily dismissed. Instead of ordering the trial court to dismiss the complaint, will justice not be served if the respondents are given due process and the parties are allowed to introduce their respective evidence and a decision on the merits is rendered?

The doctrine of constructive or implied trust raised by the respondents to justify a remand to the trial court deserves more than mere passing attention. If NDC and AMEX had notice of the infirmities attendant to the sale which never materialized for want of consideration, then they become constructive trustees of the disputed shares and, at the very least, should justify in court their alleged valid ownership of the shares acquired by them. There being a wrongful dispossession of valuable properties, the transferee to whom the dispossessor turned over the properties has to prove its alleged good faith in the face of allegations that it was not a *bona fide* buyer. I believe there is a valid cause of action based on constructive or implied trust which the trial court may examine for purposes of granting legal and equitable relief.

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The issue of prescription is likewise a matter which should be threshed out in court instead of being arbitrarily assumed to the prejudice of the victim of the forced sale.

The respondents point out:

"For purposes of extinctive prescription *vis-a-vis* movables, we therefore understand the periods to be:

1. Four years, if the possessor is in good faith;
2. Eight years in all other cases, except where the loss was due to a crime in which case, the offender can not acquire the movable by prescription, and an action to recover it from him imprescriptible.

It is evident, for purposes of the complaint in question, that the petitioners had at most eight years within which to pursue a reconveyance, reckoned from the loss of the shares in 1977, when the petitioner Vicente Tan executed the various agreements in which he conveyed the same in favor of the Executive Consultants, Inc., Orobel Property Management, Inc., and Antolun International Trading Corporation. But there were several supervening events in the nature of *force majeure* that interrupted this.

Apart from the above exposition of the substantive requirements on prescription, herein respondents submit that this issue is a matter of defense which could be better appreciated in a hearing on the merits. After all prescription is not a mere mathematical computation of a finite period. It involves situations and events that will clearly establish whether a particular plaint is time-barred. In this particular case there are abundant allegations spread out in the complaint recounting events that could only show that private respondents could not have filed the action for recovery, considering that the highest official of the land was respondent Vicente Tan's mortal enemy. Citing the dissenting opinion of Justice Edgardo L. Paras in G.R. No. 90365 the correct period is five (5) years with certain exclusions in the nature of *force majeure*. Thus, he opined,

> 'The correct period is five years under Art. 1149 of the Civil Code and not four years under Art. 1146 of the same Code. And from this period of five years must be excluded the period during which the action could not be brought because

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> of a *force majeure* (Art. 1154 of the Civil Code), as exemplified by the dictatorial regime which ruled the Philippines during the past administration. The period of prescription therefore should be counted from Feb. 25, 1986 when the present administration of President Corazon Aquino took over the control of the government. The action having been brought on Jan. 31, 1987, it is clear that counted from Feb. 25, 1986, less than a year had elapsed, and therefore the action has not yet prescribed.'

Indeed, if viewed even in another view point and considering that the suit filed with the regional trial court for reconveyance was based on constructive trust as earlier discussed, said action prescribes in ten years counted from the release of respondent Vicente Tan from detention. Thus, the present complaint dated December 27, 1977 has not prescribed." (Respondents; Memorandum, pp. 9-11)

Under the circumstances of this case, presentation of evidence, and not an automatic computation of number of years, months, and days, is necessary.

The precedents cited by the respondents show that in constructive trust, the courts reserve the freedom to apply a remedy to whatever knavery human ingenuity can invent. Constructive trust is used whenever necessary to satisfy the demands of justice; its application is limited only by the inventiveness of men who find new ways to enrich themselves unjustly by grasping what should not belong to them.

I, therefore, vote to have the issues of constructive trust and prescription threshed out in the trial court rather than summarily deny the respondents any remedy to recover what they claim to have been wrongly taken from them.