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[G.R. No. 166859. April 12, 2011]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **SANDIGANBAYAN (FIRST DIVISION), EDUARDO M. COJUANGCO, JR., AGRICULTURAL CONSULTANCY SERVICES, INC., ARCHIPELAGO REALTY CORP., BALETE RANCH, INC., BLACK STALLION RANCH, INC., CHRISTENSEN PLANTATION COMPANY, DISCOVERY REALTY CORP., DREAM PASTURES, INC., ECHO RANCH, INC., FAR EAST RANCH, INC., FILSOV SHIPPING COMPANY, INC., FIRST UNITED TRANSPORT, INC., HABAGAT REALTY DEVELOPMENT, INC., KALAWAKAN RESORTS, INC., KAUNLARAN AGRICULTURAL CORP., LABAYUG AIR TERMINALS, INC., LANDAIR INTERNATIONAL MARKETING CORP., LHL CATTLE CORP., LUCENA OIL FACTORY, INC., MEADOW LARK PLANTATIONS, INC., METROPLEX COMMODITIES, INC., MISTY MOUNTAIN AGRICULTURAL CORP., NORTHEAST CONTRACT TRADERS, INC., NORTHERN CARRIERS CORP., OCEANSIDE MARITIME ENTERPRISES, INC., ORO VERDE SERVICES, INC., PASTORAL FARMS, INC., PCY OIL MANUFACTURING CORP., PHILIPPINE TECHNOLOGIES, INC., PRIMAVERA FARMS, INC., PUNONG-BAYAN HOUSING DEVELOPMENT CORP., PURA ELECTRIC COMPANY, INC., RADIO AUDIENCE DEVELOPERS INTEGRATED ORGANIZATION, INC., RADYO PILIPINO CORP., RANCHO GRANDE, INC., REDDEE DEVELOPERS, INC., SAN ESTEBAN DEVELOPMENT CORP., SILVER LEAF PLANTATIONS, INC., SOUTHERN SERVICE TRADERS, INC., SOUTHERN STAR CATTLE CORP., SPADE ONE RESORTS CORP.,**

Supreme Court E-Library

UNEXPLORED LAND DEVELOPERS, INC., VERDANT PLANTATIONS, INC., VESTA AGRICULTURAL CORP. and WINGS RESORTS CORP., *respondents.*

[G.R. No. 169203. April 12, 2011]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **SANDIGANBAYAN (FIRST DIVISION), EDUARDO M. COJUANGCO, JR., MEADOW LARK PLANTATIONS, INC., SILVER LEAF PLANTATIONS, INC., PRIMAVERA FARMS, INC., PASTORAL FARMS, INC., BLACK STALLION RANCH, INC., MISTY MOUNTAINS AGRICULTURAL CORP., ARCHIPELAGO REALTY CORP., AGRICULTURAL CONSULTANCY SERVICES, INC., SOUTHERN STAR CATTLE CORP., LHL CATTLE CORP., RANCHO GRANDE, INC., DREAM PASTURES, INC., FAR EAST RANCH, INC., ECHO RANCH, INC., LAND AIR INTERNATIONAL MARKETING CORP., REDDEE DEVELOPERS, INC., PCY OIL MANUFACTURING CORP., LUCENA OIL FACTORY, INC., METROPLEX COMMODITIES, INC., VESTA AGRICULTURAL CORP., VERDANT PLANTATIONS, INC., KAUNLARAN AGRICULTURAL CORP., ECJ & SONS AGRICULTURAL ENTERPRISES, INC., RADYO PILIPINO CORP., DISCOVERY REALTY CORP., FIRST UNITED TRANSPORT, INC., RADIO AUDIENCE DEVELOPERS INTEGRATED ORGANIZATION, INC., ARCHIPELAGO FINANCE AND LEASING CORP., SAN ESTEBAN DEVELOPMENT CORP., CHRISTENSEN PLANTATION COMPANY, NORTHERN CARRIERS CORP., VENTURE SECURITIES, INC., BALETE RANCH, INC., ORO VERDE SERVICES, INC., and KALAWAKAN RESORTS, INC.,** *respondents.*

Supreme Court E-Library

[G.R. No. 180702. April 12, 2011]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **EDUARDO M. COJUANGCO, JR., FERDINAND E. MARCOS, IMELDA R. MARCOS, EDGARDO J. ANGARA,[*] JOSE C. CONCEPCION, AVELINO V. CRUZ, EDUARDO U. ESCUETA, PARAJA G. HAYUDINI, JUAN PONCE ENRILE, TEODORO D. REGALA, DANILO URSUA, ROGELIO A. VINLUAN, AGRICULTURAL CONSULTANCY SERVICES, INC., ANGLO VENTURES, INC., ARCHIPELAGO REALTY CORP., AP HOLDINGS, INC., ARC INVESTMENT, INC., ASC INVESTMENT, INC., AUTONOMOUS DEVELOPMENT CORP., BALETE RANCH, INC., BLACK STALLION RANCH, INC., CAGAYAN DE ORO OIL COMPANY, INC., CHRISTENSEN PLANTATION COMPANY, COCOA INVESTORS, INC., DAVAO AGRICULTURAL AVIATION, INC., DISCOVERY REALTY CORP., DREAM PASTURES, INC., ECHO RANCH, INC., ECJ & SONS AGRI. ENT., INC., FAR EAST RANCH, INC., FILSOV SHIPPING COMPANY, INC., FIRST MERIDIAN DEVELOPMENT, INC., FIRST UNITED TRANSPORT, INC., GRANEXPORT MANUFACTURING CORP., HABAGAT REALTY DEVELOPMENT, INC., HYCO AGRICULTURAL, INC., ILIGAN COCONUT INDUSTRIES, INC., KALAWAKAN RESORTS, INC., KAUNLARAN AGRICULTURAL CORP., LABAYOG AIR TERMINALS, INC., LANDAIR INTERNATIONAL MARKETING CORP., LEGASPI OIL COMPANY, LHL CATTLE CORP., LUCENA OIL FACTORY, INC., MEADOW LARK PLANTATIONS, INC., METROPLEX COMMODITIES, INC., MISTY MOUNTAIN AGRICULTURAL CORP., NORTHEAST CONTRACT TRADERS, INC., NORTHERN CARRIERS CORP., OCEANSIDE MARITIME**

[*] Defendants-lawyers from ACCRA law firm were excluded from the case per *Regala v. Sandiganbayan*, 330 Phil. 678 (1996).

Supreme Court E-Library

ENTERPRISES, INC., ORO VERDE SERVICES, INC., PASTORAL FARMS, INC., PCY OIL MANUFACTURING CORP., PHILIPPINE RADIO CORP., INC., PHILIPPINE TECHNOLOGIES, INC., PRIMAVERA FARMS, INC., PUNONG-BAYAN HOUSING DEVELOPMENT CORP., PURA ELECTRIC COMPANY, INC., RADIO AUDIENCE DEVELOPERS INTEGRATED ORGANIZATION, INC., RADYO PILIPINO CORP., RANCHO GRANDE, INC., RANDY ALLIED VENTURES, INC., REDDEE DEVELOPERS, INC., ROCKSTEEL RESOURCES, INC., ROXAS SHARES, INC., SAN ESTEBAN DEVELOPMENT CORP., SAN MIGUEL CORPORATION OFFICERS, INC., SAN PABLO MANUFACTURING CORP., SOUTHERN LUZON OIL MILLS, INC., SILVER LEAF PLANTATIONS, INC., SORIANO SHARES, INC., SOUTHERN SERVICE TRADERS, INC., SOUTHERN STAR CATTLE CORP., SPADE 1 RESORTS CORP., TAGUM AGRICULTURAL DEVELOPMENT CORP., TEDEUM RESOURCES, INC., THILAGRO EDIBLE OIL MILLS, INC., TODA HOLDINGS, INC., UNEXPLORED LAND DEVELOPERS, INC., VALHALLA PROPERTIES, INC., VENTURES SECURITIES, INC., VERDANT PLANTATIONS, INC., VESTA AGRICULTURAL CORP. and WINGS RESORTS CORP., *respondents.* **JOVITO R. SALONGA, WIGBERTO E. TAÑADA, OSCAR F. SANTOS, VIRGILIO M. DAVID, ROMEO C. ROYANDAYAN for himself and for SURIGAO DEL SUR FEDERATION OF AGRICULTURAL COOPERATIVES (SUFAC), MORO FARMERS ASSOCIATION OF ZAMBOANGA DEL SUR (MOFAZS) and COCONUT FARMERS OF SOUTHERN LEYTE COOPERATIVE (COFA-SL); PHILIPPINE RURAL RECONSTRUCTION MOVEMENT (PRRM), represented by CONRADO S. NAVARRO; COCONUT INDUSTRY REFORM MOVEMENT, INC. (COIR) represented by JOSE MARIE T. FAUSTINO; VICENTE FABE for himself and for PAMBANSANG KILUSAN NG MGA**

Supreme Court E-Library

SAMAHAN NG MAGSASAKA (PAKISAMA); NONITO CLEMENTE for himself and for the NAGKAKAISANG UGNAYAN NG MGA MALILIIT NA MAGSASAKA AT MANGGAGAWA SA NIYUGAN (NIUGAN); DIONELO M. SUANTE, SR. for himself and for KALIPUNAN NG MALILIIT NA MAGNINIYOG NG PILIPINAS (KAMMPIL), INC., *petitioners-intervenors.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; NOT ESTABLISHED IN THE CASE AT BAR.— Plainly enough, the irregularities infirming the issuance of the several WOS could not be ignored in favor of the Republic and resolved against the persons whose properties were subject of the WOS. Where the Rules of the PCGG instituted safeguards under Section 3, *supra*, by requiring the concurrent signatures of two Commissioners to every WOS issued and the existence of a *prima facie* case of ill gotten wealth to support the issuance, the non-compliance with either of the safeguards nullified the WOS thus issued. It is already settled that sequestration, due to its tendency to impede or limit the exercise of proprietary rights by private citizens, is construed *strictly* against the State, conformably with the legal maxim that statutes in derogation of common rights are generally strictly construed and rigidly confined to the cases clearly within their scope and purpose. Consequently, the nullification of the nine WOS, being in implementation of the safeguards the PCGG itself had instituted, did not constitute any abuse of its discretion, least of all grave, on the part of the Sandiganbayan.

2. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; EXECUTIVE ORDER NO. 1 (1986); PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT; ILL-GOTTEN WEALTH; MEANING AND CONCEPT, ELABORATED.— In time and unavoidably, the Supreme Court elaborated on the meaning and concept of *ill-gotten wealth*. In *Bataan Shipyard & Engineering Co., Inc. v. Presidential Commission on Good Government*, or *BASECO*, for the sake of brevity, the Court held that: xxx until it can be determined, through appropriate judicial proceedings,

whether the property was in truth "ill-gotten," *i.e.*, acquired through or as a result of improper or illegal use of or the conversion of **funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions,** or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. And this, too, is the sense in which the term is commonly understood in other jurisdictions. The *BASECO* definition of *ill-gotten wealth* was reiterated in *Presidential Commission on Good Government v. Lucio C. Tan*, where the Court said: On this point, we find it relevant to define "ill-gotten wealth." In *Bataan Shipyard and Engineering Co., Inc.*, this Court described "ill-gotten wealth" as follows: "Ill-gotten wealth is that acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. And this, too, is the sense in which the term is commonly understood in other jurisdiction." x x x Incidentally, in its 1998 ruling in *Chavez v. Presidential Commission on Good Government*, the Court rendered an identical definition of *ill-gotten wealth*, *viz*: xxx. We may also add that 'ill-gotten wealth', by its very nature, assumes a public character. Based on the aforementioned Executive Orders, 'ill-gotten wealth' refers to assets and properties purportedly acquired, directly or indirectly, by former President Marcos, his immediate family, relatives and close associates through **or as a result of their improper or illegal use of government funds or properties; or their having taken undue advantage of their public office; or their use of powers, influence or relationships**, "resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines." **Clearly, the assets and properties referred to supposedly originated from the government itself**. **To all intents and purposes, therefore, they belong to the people. As such, upon reconveyance they will be returned to the public treasury.**

Supreme Court E-Library

3. ID.; ID.; ID.; ID.; ID.; ID.; TWO CONCURRING ELEMENTS NECESSARY.— [T]wo concurring elements to be present before assets or properties were considered as *ill-gotten wealth*, namely: (*a*) they must have "originated from the government itself," and (*b*) they must have been taken by former President Marcos, his immediate family, relatives, and close associates *by illegal means*.

4. ID.; ID.; ID.; ID.; ID.; ID.; ID.; COMPETENT EVIDENTIARY SUBSTANTIATION MADE IN APPROPRIATE JUDICIAL PROCEEDINGS, REQUIRED; REASONS.— It is well to point out, consequently, that the distinction laid down by E.O. No. 1 and its related issuances, and expounded by relevant judicial pronouncements unavoidably required *competent evidentiary substantiation* made in *appropriate judicial proceedings* to determine: (*a*) whether the assets or properties involved had come from the vast resources of government, and (*b*) whether the individuals owning or holding such assets or properties were close associates of President Marcos. The requirement of *competent evidentiary substantiation* made in *appropriate judicial proceedings* was imposed because the factual premises for the reconveyance of the assets or properties in favor of the government due to their being ill-gotten wealth could not be simply assumed. x x x Accordingly, the Republic should furnish to the Sandiganbayan in proper judicial proceedings the competent evidence proving who were the close associates of President Marcos who had amassed assets and properties that would be rightly considered as *ill-gotten wealth.*

5. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; MANNER OF MAKING ALLEGATIONS IN PLEADINGS; SPECIFIC DENIAL; THREE METHODS; APPLICATION OF THE FIRST METHOD IN THE CASE AT BAR.— In this jurisdiction, only a specific denial shall be sufficient to place into contention an alleged fact. Under Section 10, Rule 8 of the *Rules of Court*, a specific denial of an allegation of the complaint may be made in any of three ways, namely: (*a*) a defendant specifies each material allegation of fact the truth of which he does not admit and, whenever practicable, sets forth the substance of the matters upon which he relies to support his denial; (*b*) a defendant who desires to deny only a part of an averment specifies so much of it as is true and material and denies only the remainder; and (*c*) a defendant who is without

Supreme Court E-Library

knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint states so, which has the effect of a denial. The express qualifications contained in paragraph 2.01 of Cojuangco's *Answer* constituted efficient specific denials of the averments of paragraph 2 of the Republic's *Amended Complaint* under the first method mentioned in Section 10 of Rule 8, *supra*. Indeed, the aforequoted paragraphs of the *Amended Complaint* and of Cojuangco's *Answer* indicate that Cojuangco thereby *expressly qualified* his admission of having been the President and a Director of the UCPB with the averment that the UCPB was a "private corporation;" that his *Answer*'s allegation of his being a member of the Board of Directors of the United Coconut Oil Mills, Inc. did not admit that he was a member of the Board of Directors of the CIIF Oil Mills, because the United Coconut Oil Mills, Inc. was not one of the CIIF Oil Mills; and that his *Answer* nowhere contained any admission or statement that he had held the various positions in the government or in the private corporations at the same time *and* in 1983, the time when the contested acquisition of the SMC shares of stock took place.

6. ID.; EVIDENCE; ADMISSIONS; ELUCIDATED; ANY STATEMENT TO BE CONSIDERED AS AN ADMISSION FOR PURPOSES OF JUDICIAL PROCEEDINGS SHOULD BE DEFINITE, CERTAIN AND UNEQUIVOCAL; CASE AT BAR.— What the Court stated in *Bitong v. Court of Appeals (Fifth Division)* as to admissions is illuminating: When taken in its totality, the *Amended Answer to the Amended Petition*, or even the *Answer to the Amended Petition* alone, clearly raises an issue as to the legal personality of petitioner to file the complaint. **Every alleged admission is taken as an entirety of the fact which makes for the one side with the qualifications which limit, modify or destroy its effect on the other side.** The reason for this is, where part of a statement of a party is used against him as an admission, the court should weigh any other portion connected with the statement, which tends to neutralize or explain the portion which is against interest. In other words, **while the admission is admissible in evidence, its probative value is to be determined from the whole statement and others intimately related or connected therewith as an integrated unit.**

Supreme Court E-Library

Although acts or facts admitted do not require proof and cannot be contradicted, however, evidence *aliunde* can be presented to show that the admission was made through palpable mistake. **The rule is always in favor of liberality in construction of pleadings so that the real matter in dispute may be submitted to the judgment of the court.** x x x [T]he statements found under the heading of *Proposed Evidence* in the joint Pre-Trial Brief were incomplete and inadequate on the important details of the *supposed* transactions (*i.e.*, alleged borrowings and advances). As such, they could not constitute admissions that the funds had come from borrowings by Cojuangco, *et al.* from the UCPB or had been credit advances from the CIIF Oil Companies. Moreover, the purpose for presenting the records of the UCPB and the representatives of the UCPB and of the still unidentified or unnamed CIIF Oil Mills as declared in the joint Pre-Trial Brief did not at all show whether the UCPB and/or the unidentified or unnamed CIIF Oil Mills were the *only* sources of funding, or that such institutions, assuming them to be the sources of the funding, had been the *only* sources of funding. Such ambiguousness disqualified the statements from being relied upon as admissions. It is fundamental that any statement, to be considered as an admission for purposes of judicial proceedings, should be *definite*, *certain* and *unequivocal*; otherwise, the disputed fact will not get settled.

7. ID.; ID.; BURDEN OF PROOF; DEFINED; CASE AT BAR.— The burden of proof, according to Section 1, Rule 131 of the *Rules of Court*, is "the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." Here, the Republic, being the plaintiff, was the party that carried the burden of proof. That burden required it to demonstrate through competent evidence that the respondents, as defendants, had purchased the SMC shares of stock with the use of public funds; and that the affected shares of stock constituted *ill-gotten wealth*. The Republic was well apprised of its burden of proof, first through the joinder of issues made by the responsive pleadings of the defendants, including Cojuangco, *et al.* The Republic was further reminded through the pre-trial order and the Resolution denying its *Motion for Summary Judgment*, *supra*, of the duty to prove the factual allegations on ill-gotten wealth against Cojuangco, *et al*. x x x With the Republic nonetheless choosing not to

Supreme Court E-Library

adduce evidence proving the factual allegations, particularly the aforementioned matters, and instead opting to pursue its claims by *Motion for Summary Judgment*, the Sandiganbayan became completely deprived of the means to know the necessary but crucial details of the transactions on the acquisition of the contested block of shares. The Republic's failure to adduce evidence shifted no burden to the respondents to establish anything, for it was basic that the party who asserts, not the party who denies, must prove. Indeed, in a civil action, the plaintiff has the burden of pleading every essential fact and element of the cause of action and proving them by preponderance of evidence. This means that if the defendant merely denies each of the plaintiff's allegations and neither side produces evidence on any such element, the plaintiff must necessarily fail in the action. Thus, the Sandiganbayan correctly dismissed Civil Case No. 0033-F for failure of the Republic to prove its case by preponderant evidence.

8. ID.; CIVIL PROCEDURE; SUMMARY JUDGMENT; EXPLAINED.— A summary judgment under Rule 35 of the *Rules of Court* is a procedural technique that is proper only when there is no genuine issue as to the existence of a material fact and the moving party is entitled to a judgment as a matter of law. It is a method intended to expedite or promptly dispose of cases where the facts appear *undisputed* and *certain* from the pleadings, depositions, admissions, and affidavits on record. Upon a motion for summary judgment the court's sole function is to determine whether there is an issue of fact to be tried, and all doubts as to the existence of an issue of fact must be resolved *against* the moving party. In other words, a party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, and any doubt as to the existence of such an issue is resolved against the movant. Thus, in ruling on a motion for summary judgment, the court should take that view of the evidence most favorable to the party against whom it is directed, giving that party the benefit of all favorable inferences.

9. ID.; ID.; ID.; GENUINE ISSUE; DEFINED.— The term *genuine issue* has been defined as an issue of fact that calls for the presentation of evidence as distinguished from an issue that is sham, fictitious, contrived, set up in bad faith, and patently unsubstantial so as not to constitute a genuine issue for trial.

Supreme Court E-Library

The court can determine this on the basis of the pleadings, admissions, documents, affidavits, and counter-affidavits submitted by the parties to the court. Where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial.

10. ID.; ID.; ID.; A PARTY WHO MOVES FOR SUMMARY JUDGMENT HAS THE BURDEN OF DEMONSTRATING CLEARLY THE ABSENCE OF ANY GENUINE ISSUE OF FACT; SUMMARY JUDGMENT, NOT WARRANTED IN THE CASE AT BAR.— Well-settled is the rule that a party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact. Upon that party's shoulders rests the burden to prove the cause of action, and to show that the defense is interposed solely for the purpose of delay. After the burden has been discharged, the defendant has the burden to show facts sufficient to entitle him to defend. Any doubt as to the propriety of a summary judgment shall be resolved against the moving party. We need not stress that the trial courts have limited authority to render summary judgments and may do so only in cases where no genuine issue as to any material fact clearly exists between the parties. The rule on summary judgment does not invest the trial courts with jurisdiction to try summarily the factual issues upon affidavits, but authorizes summary judgment only when it appears clear that there is no genuine issue as to any material fact.

11. MERCANTILE LAW; BANKING LAWS; REPUBLIC ACT NO. 337 (GENERAL BANKING LAW), AS AMENDED; DOSRI AND SINGLE BORROWER'S LIMIT RESTRICTIONS, NOT VIOLATED.— The Republic's lack of proof on the source of the funds by which Cojuangco, *et al.* had acquired their block of SMC shares has made it shift its position, that it now suggests that Cojuangco had been enabled to obtain the loans by the issuance of LOI 926 exempting the UCPB from the DOSRI and the Single Borrower's Limit restrictions. We reject the Republic's suggestion. Firstly, as earlier pointed out, the Republic adduced no evidence on the significant particulars of the supposed loan, like the amount, the actual borrower, the approving official, *etc*. It did not also establish whether or not the loans were DOSRI or issued in violation of the Single Borrower's Limit. Secondly, the Republic

Supreme Court E-Library

could not outrightly assume that President Marcos had issued LOI 926 for the purpose of allowing the loans by the UCPB in favor of Cojuangco. There must be competent evidence to that effect. And, finally, the loans, assuming that they were of a DOSRI nature or without the benefit of the required approvals or in excess of the Single Borrower's Limit, would not be void for that reason. Instead, the bank or the officers responsible for the approval and grant of the DOSRI loan would be subject only to sanctions under the law.

12. ID.; CORPORATION LAW; CORPORATIONS; PRIVATE CORPORATION; BOARD OF DIRECTORS; NO VIOLATION OF FIDUCIARY DUTIES AS OFFICER AND MEMBER OF THE BOARD OF DIRECTORS IN THE CASE AT BAR.— The conditions for the application of Articles 1455 and 1456 of the *Civil Code* (like the trustee using trust funds to purchase, or a person acquiring property through mistake or fraud), and Section 31 of the *Corporation Code* (like a director or trustee willfully and knowingly voting for or assenting to patently unlawful acts of the corporation, among others) require factual foundations to be first laid out in appropriate judicial proceedings. Hence, concluding that Cojuangco breached fiduciary duties as an officer and member of the Board of Directors of the UCPB *without competent evidence thereon* would be unwarranted and unreasonable. Thus, the Sandiganbayan could not fairly find that Cojuangco had committed breach of any fiduciary duties as an officer and member of the Board of Directors of the UCPB. For one, the *Amended Complaint* contained no clear factual allegation on which to predicate the application of Articles 1455 and 1456 of the *Civil Code*, and Section 31 of the *Corporation Code*. Although the trust relationship supposedly arose from Cojuangco's being an officer and member of the Board of Directors of the UCPB, the *link* between this alleged fact and the borrowings or advances was not established. Nor was there evidence on the loans or borrowings, their amounts, the approving authority, *etc*. As trial court, the Sandiganbayan could not presume his breach of fiduciary duties without evidence showing so, for fraud or breach of trust is never presumed, but must be alleged *and* proved.

13. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; LOAN; EXPOUNDED; THE RESULTING

Supreme Court E-Library

RELATIONSHIP BETWEEN A CREDITOR AND DEBTOR IN A CONTRACT OF LOAN CANNOT BE CHARACTERIZED AS FIDUCIARY.— The thrust of the Republic that the funds were *borrowed* or *lent* might even preclude any consequent trust implication. In a contract of loan, one of the parties (*creditor*) delivers money or other consumable thing to another (*debtor*) on the condition that the same amount of the same kind and quality shall be paid. Owing to the consumable nature of the thing loaned, the resulting duty of the borrower in a contract of loan is *to pay*, not *to return*, to the creditor or lender the very thing loaned. This explains why the ownership of the thing loaned is transferred to the debtor upon perfection of the contract. Ownership of the thing loaned having transferred, the debtor enjoys all the rights conferred to an owner of property, including the right to use and enjoy (*jus utendi*), to consume the thing by its use (*jus abutendi*), and to dispose (*jus disponendi*), subject to such limitations as may be provided by law. Evidently, the resulting relationship between a creditor and debtor in a contract of loan cannot be characterized as fiduciary.

CARPIO MORALES, *J., dissenting opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG); PCGG RULES AND REGULATIONS; SECTION 3 THEREOF, CONSTRUED; SANDIGANBAYAN COMMITTED NO GRAVE ABUSE OF DISCRETION IN LIFTING THE WRITS OF SEQUESTRATION IN THE CASE AT BAR.— Section 3 of the PCGG Rules and Regulations promulgated on April 11, 1986 reads: Sec. 3. *Who may issue*. A writ of sequestration or a freeze or hold order may be issued by the Commission **upon the authority of at least two Commissioners**, based on the affirmation or complaint of an interested party or *motu proprio* when the Commission has reasonable grounds to believe that the issuance thereof is warranted. Respecting the lifting of the seven writs, the Sandiganbayan committed no grave abuse of discretion as their issuance violated the immediately-quoted provision of Section 3 of the PCGG Rules and Regulations. Indeed, the Sandiganbayan merely adhered to this Court's 1998

Supreme Court E-Library

ruling in *Republic v. Sandiganbayan* which construed Section 3 to mean that the authority given by two commissioners for the issuance of a sequestration, freeze or hold order should be evident in the order itself. x x x The Republic, in fact, impliedly concedes that the seven writs of sequestration were tainted with violations of the two-commissioner rule.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE SUPREME COURT DOES NOT RESOLVE A QUESTION OF FACT.— With respect to the lifting of the two other writs, Writ Nos. 86-0042 and 87-0218 which, albeit did not violate the two-commissioner rule, were lifted for lack of *prima facie* basis for their issuance, that involves a *factual* issue. It is settled that the Court does not resolve a question of fact, which exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.

3. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG); PCGG RULES AND REGULATIONS; WRIT OF SEQUESTRATION; THE ABSENCE OF A PRIOR DETERMINATION BY THE PCGG OF A *PRIMA FACIE* BASIS FOR THE SEQUESTRATION ORDER IS A FATAL DEFECT TO RENDER THE SEQUESTRATION OF A CORPORATION AND ITS PROPERTIES VOID *AB INITIO*.— The absence of a prior determination by the PCGG of a *prima facie* basis for the sequestration order is, unavoidably, a fatal defect to render the sequestration of a corporation and its properties void *ab initio*. That there are allegations in the subsequently filed complaint indicative of ill-gotten wealth does not prove *per se* that an actual deliberation or consideration of evidence was *priorly* made to arrive at the required quantum of proof for the issuance of the sequestration orders. As found by the Sandiganbayan, the records of the PCGG were either utterly silent or entirely insufficient on its compliance with this requirement. There were no minutes of any meeting leading to the issuance of Writ No. 86-0042 which was signed "for the commission" by Commissioner Mary Concepcion Bautista

Supreme Court E-Library

on April 8, 1986. As for Writ No. 87-0218 which was issued on May 27, 1987, the only relevant document presented relates to the minutes of the May 26, 1987 meeting x x x. The dearth of any record from which a deliberation or derivation of a *prima facie* finding could be established renders nugatory the "*opportunity to contest*" afforded to a person whose property is sequestered.

4. REMEDIAL LAW; SANDIGANBAYAN; JURISDICTION; THE MATTER OF THE LEGALITY AND PROPRIETY OF A SEQUESTRATION IS SUBJECT EXCLUSIVELY TO JUDICIAL ADJUDICATION BY THE SANDIGANBAYAN; SANDIGANBAYAN'S POWER DOES NOT INCLUDE THE POWER TO SEIZE IN THE FIRST INSTANCE PROPERTIES PURPORTING TO BE ILL-GOTTEN.— The Republic goes on to fault the Sandiganbayan for denying its alternative prayer in its motion for reconsideration — for the issuance by the Sandiganbayan of an order of sequestration against the subject SMC shares in accordance with this Court's decision in the 1996 case of *Republic v. Sandiganbayan* x x x. Nowhere in the x x x Court's decision [in the 1996 case of *Republic v. Sandiganbayan*] was it mentioned that the Sandiganbayan has the power to issue a writ of sequestration similar to that vested in the PCGG. The quoted portion relates solely to the resolution of the second issue in that case — whether the Sandiganbayan has "jurisdiction over a motion questioning the validity of a 'sequestration order' issued by a duly authorized representative of the PCGG." In ruling in the affirmative, this Court settled that the matter of the *legality* and *propriety* of a sequestration, being an incident of the case, is subject "exclusively to judicial adjudication" by the Sandiganbayan. The Court therein emphatically reiterated that the remedies are always subject to the control of the Sandiganbayan which acts as the arbiter between the PCGG and the claimants. Moreover, the Court, in no uncertain terms, recognized that under no circumstance can a sequestration or freeze order be validly issued by one who is not a Commissioner of the PCGG. The Sandiganbayan's ample power referred to therein to control the proceedings refers to the issuance of ancillary orders or writs of attachment, upon proper application, to effectuate its judgment, but does *not* include the power to seize in the first instance properties purporting to be ill-gotten.

5. ID.; ID.; ID.; SANDIGANBAYAN BEREFT OF JURISDICTION TO ORDER THE ANNOTATION OF THE FOUR RESTRICTIVE CONDITIONS ON THE RELEVANT CORPORATE BOOKS OF SAN MIGUEL CORPORATION (SMC) DESPITE THE LIFTING OF THE WRITS OF SEQUESTRATION.— With regard to the order for the annotation of the four restrictive conditions on the relevant corporate books of the SMC, **despite** the lifting of the writs of sequestration, the Sandiganbayan was bereft of jurisdiction to do so. While it has ample power to make such interlocutory orders as may be necessary to ensure that its judgment would not be rendered ineffective, that is not a license for it to *motu proprio* issue every order it may deem fit. The intended annotation of the four conditions is akin to a notice of *lis pendens*, which applies only in an action affecting the title or right of possession of *real* property. The case involves *personal* property, however.

6. ID.; APPEALS; APPLICATION OF THE RULE AGAINST GRANTING AFFIRMATIVE RELIEFS TO A NON-APPEALING PARTY; ORDINARY APPEAL DISTINGUISHED FROM A SPECIAL CIVIL ACTION OF *CERTIORARI*.— *Prudential Bank & Trust Co. v. Reyes*, however, distinguishes an ordinary appeal from a *special civil action of certiorari*, insofar as the application of the rule against granting affirmative reliefs to a non-appealing party is involved. On the one hand, it is settled that in ordinary appeals a party who did not appeal cannot seek affirmative relief other than the ones granted in the disputed decision. An appellant can assign as many errors as he may deem to be reversible. On the other hand, resort to a judicial review in a petition for *certiorari* is confined to issues of want or excess of jurisdiction and grave abuse of discretion that go into the validity of the challenged issuance.

7. ID.; ID.; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; QUESTION OF FACT DISTINGUISHED FROM QUESTION OF LAW; PETITION IN G.R. NO. 180702 RAISED A QUESTION OF LAW; ELUCIDATED.— The distinction between "questions of law" and "questions of fact" has long been settled. There is a question of law when the doubt or difference arises as to what the law is on certain state of facts, and which does not call for an examination of the probative value of the evidence

Supreme Court E-Library

presented by the parties-litigants. On the other hand, there is a question of fact when the doubt or controversy arises as to the truth or falsity of the alleged facts. Simply put, when there is no dispute as to fact, the question of whether the conclusion drawn therefrom is correct is a question of law. Whether a question is one of law or of fact is not determined by the appellation given to such question by the party raising it; rather, it is whether a court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact. The resolution of the issues involved in G.R. No. 180702 does not entail a reevaluation of the probative value of documentary evidence or the credibility of witnesses, for none was presented during the trial. The Court needs only to look into the **pleadings** and the **parties' submissions** without necessarily going into the truth or falsity thereof. Any review would only be limited to the inquiry of whether the law was properly applied given the submissions which are part of the record, the fact of filing of which is not contested by the parties. Since the petition assails the correctness of the conclusions drawn by the Sandiganbayan from the set of facts it considered, the question is one of law.

8. ID.; CIVIL PROCEDURE; PRE-TRIAL; PRE-TRIAL BRIEF; PARTIES ARE BOUND BY THE REPRESENTATIONS AND STATEMENTS IN THEIR PRE-TRIAL BRIEFS; SANDIGANBAYAN'S FINDING THAT THE SOURCES OF FUNDS USED TO ACQUIRE THE SMC SHARES IS NOT A DISPUTED FACT.— The Sandiganbayan's finding that the "'various sources' of funds" that respondents used to acquire the subject SMC shares is a disputed fact is inaccurate. x x x The Sandiganbayan's finding totally disregards the statements of respondents in their joint Pre-Trial Brief that they obtained loans and credit advances from the UCPB and CIIF Oil Mills for the purchase of the subject SMC shares. x x x Evidently, the identity of the various sources in funding the stock purchase became pronounced during the pre-trial. **The statements are clear admission on respondents' part that the purchase price of the subject SMC shares were paid, either in whole or in part, out of loans and credit advances from the UCPB and CIIF Oil Mills**. x x x **Respondents having admitted that such loans and credit advances funded the acquisition of the SMC shares, the plaintiff-Republic did not have to**

present proof thereof anymore. For judicial admissions do *not* require proof to establish that UCPB loans and CIIF Oil Mills credit advances financed the stock purchase transaction of subject SMC shares. x x x. Indeed, the Rules re-echo that "[t]he parties are bound by the representations and statements in their respective pre-trial briefs." x x x One such admission is the submission in Cojuangco, *et al.*'s joint Pre-Trial Brief that revealed the **identity of the loans as advances from CIIF Oil Mills and loans from UCPB.** They are bound by this representation in their Pre-Trial Brief, at least, insofar as the basic fact that the borrowings were obtained from CIIF Oil Mills and UCPB.

9. ID.; EVIDENCE; JUDICIAL ADMISSIONS ARE GENERALLY CONSIDERED CONCLUSIVE TO THE CONCERNED PARTY; EXCEPTION; IN THE CASE AT BAR, RESPONDENTS' JUDICIAL ADMISSIONS EVENTUALLY SOLIDIFIED WHEN THEY DID NOT GO TO TRIAL TO MODIFY THEIR EARLIER ADMISSIONS.— Judicial admissions are **generally considered conclusive** to the concerned party. Certain jurisprudence, however, provides the admitting party some **leeway to vary or override such admissions,** provided the matter is identified as an issue and the admitting party presents contrary evidence during trial. In one case, it was held: In addition, despite Urdaneta City's judicial admissions, the trial court is still given leeway to consider other evidence to be presented for said admissions may not necessarily prevail over documentary evidence, *e.g.*, the contracts assailed. A party's testimony in open court may also override admissions in the Answer. On the premise that the admissions were not conclusive prior to trial, Cojuangco, *et al.*, however, did not go to trial even to attempt to modify their earlier judicial admissions. Hence, their judicial admissions eventually solidified.

10. ID.; ID.; BURDEN OF PROOF AND PRESUMPTIONS; NEGATIVE ALLEGATIONS NEED NOT BE PROVED EVEN IF ESSENTIAL TO ONE'S CAUSE OF ACTION OR DEFENSE IF THEY CONSTITUTE A DENIAL OF THE EXISTENCE OF A DOCUMENT THE CUSTODY OF WHICH BELONGS TO THE OTHER PARTY.— *Herrera v. Court of Appeals* teaches that **it is not incumbent upon the plaintiff to adduce positive evidence to support a**

Supreme Court E-Library

negative averment (*i.e.*, acquired *without* using private funds) the truth of which is fairly indicated by established circumstances and **which, if untrue, could readily be disproved by the production of documents or other evidence probably within the defendant's possession or control**. Even assuming *arguendo* that "without using private funds" is elemental to the cause of action of the plaintiff who must bear the burden of proof, *Philippine Savings Bank v. Geronimo* instructs that "**negative allegations need not be proved** even if essential to one's cause of action or defense **if they constitute a denial of the existence of a document the custody of which belongs to the other party**." This category of relevant facts that need not be proven by evidence is identified as "*facts peculiarly within the knowledge of the opposite party*." Cojuangco, *et al.* could have simply presented in evidence documents under their custody, if any, to show that other financial resources were used to finance the stock purchase, which may have qualified, on allowable grounds, their earlier judicial admission and accordingly crumbled the plaintiff's case into fractions. Whichever way of looking at the matter of "non-usage or usage of private funds" – either as a "negative averment" on the part of the Republic or an "affirmative defense" on the part of Cojuangco, *et al.* — the bottom line remains the same: the burden of evidence that there were other loans that partly funded the purchase of the SMC shares was borne by Cojuangco, *et al.*, failing which is fatal to them.

11. ID.; ID.; ID.; THE PARTY UPON WHOM THE ULTIMATE BURDEN LIES IS TO BE DETERMINED BY THE PLEADINGS, NOT BY WHO IS THE PLAINTIFF OR THE DEFENDANT.— Cojuangco admitted in the present case that he purchased the SMC shares of stock but averred that he used the proceeds of certain loans to finance the purchase of the SMC shares. This defense by way of avoidance of the plaintiff's claim could have buttressed the defendants' claim that not a single peso of public money was used in buying the shares. Cojuangco, however, took a similar route in the present case, despite the myriad of admissions, judicial notices, and *prima facie* circumstances that, absent any varying evidence, consequently fortified the Republic's case. Indeed, "**in the final analysis, the party upon whom the ultimate burden lies is to be determined by the pleadings, *not* by who is**

the plaintiff or the defendant." After the trial (or the lack thereof despite the trial settings), it became clear that the **borrowings from CIIF Oil Mills and UCPB exclusively funded the purchase of the SMC shares.**

12. POLITICAL LAW; PRESIDENTIAL DECREE NO. 755; COCONUT LEVY FUNDS; REMAINED PUBLIC IN CHARACTER UPON THEIR TRANSFER FROM THE PHILIPPINE COCONUT AUTHORITY TO THE UCPB.— Since the UCPB was **acquired** by the government using the coconut levy funds, and "all assets acquired therefrom" are *prima facie* public in character, it follows that the coco levy funds remained public in character upon their transfer, pursuant to Presidential Decree (P.D.) No. 755, from the Philippine Coconut Authority to the UCPB. The funds remained in the government's possession throughout the entire transaction.

13. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS, BURDEN OF EVIDENCE AND *PRIMA FACIE* EVIDENCE, DEFINED; APPLICATION IN THE CASE AT BAR.— Given the Court's pronouncement that coconut levy funds are *prima facie* public in nature, the holder of shares of stock that trace their roots from such funds must, in light of the immediately-quoted portion of the Court's decision in the 2007 case of *Republic v. Sandiganbayan (First Division)*, overcome the *prima facie* presumption or otherwise prove that the shares are legitimately privately owned. In view of that opportunity that was yet to be availed by respondents during trial, the Sandiganbayan exercised sound discretion in denying the plaintiff's motion for summary judgment by the assailed Resolution in G.R. No. 166859. A court, when confronted with this situation, is justified in not granting a summary judgment. This marked difference provides an alert tab for courts to proceed to trial. The same posture cannot stand, however, with respect to the Sandiganbayan's subsequent Decision of November 28, 2007, challenged in G.R. No. 180702, wherein respondents already abstained from presenting countervailing evidence after affording them the chance. In other words, Cojuangco, *et al.* failed to overcome the *prima facie* public character of the nature of the SMC shares as fruits of pubic funds. Burden of proof is the duty of any party to present evidence to establish his claim or defense by the amount of evidence required by law, which is preponderance of evidence

Supreme Court E-Library

in civil cases. The party, whether plaintiff or defendant, who asserts the affirmative of the issue has the burden of proof to obtain a favorable judgment. Upon the plaintiff in a civil case, the burden of proof never parts, though in the course of trial, once the plaintiff makes out a *prima facie* case in his favor, the duty or the burden of evidence shifts to the defendant to controvert the plaintiff's *prima facie* case; otherwise, a verdict must be returned in favor of the plaintiff. It is the burden of evidence which shifts from party to party depending upon the exigencies of the case in the course of trial. The term *prima facie* evidence denotes evidence which, if unexplained or uncontradicted, is sufficient to sustain the proposition it supports or to establish the facts. *Prima facie* means it is "sufficient to establish a fact or raise a presumption unless disproved or rebutted." **In fine, plaintiff having shown that the SMC shares came into fruition from coco levy funds that are *prima facie* public funds, it was incumbent upon respondents to go forward with contradicting evidence. *This they did not do*.**

14. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; EXECUTIVE ORDER NO. 2 (1986); ILL-GOTTEN WEALTH, DEFINED.— E.O. No. 2 describes ill-gotten assets as, *inter alia*, shares of stock acquired through ***or*** as a result of the improper or illegal use of or the conversion of funds or properties owned by the Government or its branches, instrumentalities, enterprises, banks or financial institutions.

15. ID.; ADMINISTRATIVE LAW; PUBLIC CORPORATIONS; UCPB IS A GOVERNMENT-OWNED AND CONTROLLED CORPORATION; RESPONDENT COJUANGCO WAS A PUBLIC OFFICER DURING THE MARCOS ADMINISTRATION.— Since appointment as member of the PCA Board is made by the President, judicial notice of Cojuangco's appointment by then President Marcos as PCA Director must be also taken, it being an official act of the executive department of the Philippines. A sampling of available public records in the form of PCA annual reports confirms that Cojuangco was a member of the governing board of the PCA in the early 1980s. With respect to the UCPB, Cojuangco's description of it as a "*private* corporation" does not bind the Court and cannot lend support to the proposition that the period during which he was the UCPB President and Director is not

within the scope of his subsequent admission as a "*public* officer during the Marcos Administration." **UCPB was a public corporation during the period material to the complaint.** Paragraph 13, Section 2 of the Administrative Code of 1987 provides: (13) Government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: Provided, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations. x x x Given the extent of government ownership of its shares of stock, the public nature of the funds in its control, the purpose for which it was acquired, and the manner of its acquisition, UCPB was thus a government-owned and controlled corporation (GOCC). Cojuangco, as then President and Member of the Board of Directors of UCPB, was thus, indeed, a public officer during the Marcos Administration.

16. ID.; ID.; ID.; ID.; FIDUCIARY DUTY, DEFINED; FIDUCIARY, ELUCIDATED; BREACH OF FIDUCIARY DUTY AS A DIRECTOR, ESTABLISHED IN THE CASE AT BAR.— It having been established that Cojuangco was a Director of PCA, a government entity, and a President and Director of UCPB, a GOCC, his act of acquiring loans and credit advances from UCPB and the CIIF Oil Mills in order to purchase the subject SMC shares through the various Cojuangco companies was **in violation of his fiduciary duty as director.** "Fiduciary duty" has been defined as "a duty to act for someone else's benefit, while subordinating one's personal interests to that of the other person. It is the highest standard of duty implied by law. "Fiduciary" connotes a very broad term embracing both technical relations and those informal relations which exist wherever one person trusts in or relies upon another; one founded on trust or confidence reposed by one person in the integrity and fidelity of another. Such relationship arises

Supreme Court E-Library

whenever confidence is reposed on one side, and domination and influence result on the other; the relation can be legal, social, domestic, or merely personal. It is a relation subsisting between two persons in regard to a business, contract, or piece of property, or in regard to the general business or estate of one of them, of such a character that each must repose trust and confidence in the other and must exercise a corresponding degree of fairness and good faith. Out of such a relation, the law raises the rule that neither party may exert influence or pressure upon the other, take selfish advantage of his trust, or deal with the subject-matter of the trust in such a way as to benefit himself or prejudice the other except in the exercise of the utmost good faith and with the full knowledge and consent of that other, business shrewdness, hard bargaining, and astuteness to take advantage of the forgetfulness or negligence of another being totally prohibited as between persons standing in such a relation to each other.

17. MERCANTILE LAW; CORPORATION CODE; SECTIONS 31 AND 34 THEREOF; VIOLATED IN THE CASE AT BAR.— [I]n view of the public nature of the funds involved, Cojuangco became a fiduciary not only of the **entities** involved but also of the **public funds**. As stated in *Gokongwei*, a director cannot serve himself first and his *cestuis* (the corporations and the public) second or use his power as such director or officer for his personal advantage or preference. Since the avowed purpose for which UCPB was acquired by the government was to administer the coco levy funds to provide them with "readily available credit facilities at preferential rates," Cojuangco, **in buying the SMC shares** through the loans he obtained from UCPB and CIIF Oil Mills **for his own benefit**, **violated his fiduciary obligations by *self-dealing*,** an act proscribed under the Corporation Code, Sections 31 and 34 of which read: **Sec. 31. *Liability of directors, trustees or officers.* — Directors or trustees** who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation **or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.** x x x **Sec. 34.**

Supreme Court E-Library

Disloyalty of a director. — **Where a director, by virtue of his office, acquires for himself a business opportunity which should belong to the corporation, thereby obtaining profits to the prejudice of such corporation, he must account to the latter for all such profits by refunding the same,** unless his act has been ratified by a vote of the stockholders owning or representing at least two-thirds (2/3) of the outstanding capital stock. This provision shall be applicable, notwithstanding the fact that the director risked his own funds in the venture.

18. POLITICAL LAW; PRESIDENTIAL DECREE NO. 961; SECTION 9 THEREOF; INVESTMENTS MUST BE FOR THE BENEFIT OF THE COCONUT FARMERS; VIOLATED IN THE CASE AT BAR.— Under Section 9 of P.D. No. 961, what UCPB was, at most, authorized to invest in were shares of stocks in corporations engaged in businesses *related to the coconut and palm oil industry* of which SMC, then primarily engaged in the food and beverage industries, may not be considered covered. The provision adverted to reads: **Section 9.** *Investments For the Benefit of the Coconut Farmers*. Notwithstanding any law to the contrary, the bank acquired for the benefit of the coconut farmers under P.D. 755 is hereby given full power and authority **to make investments in the form of shares of stock in corporations organized for the purpose of engaging in the establishment and the operation of industries and commercial activities and other allied business undertakings relating to the coconut and other palm oils industry in all its aspects and the establishment of a research into the commercial and industrial uses of coconut and other palm oil industry**. For that purpose, the Authority shall, from time to time, ascertain how much of the collections of the Coconut Consumers Stabilization Fund and/or the Coconut Industry Development Fund is not required to finance the replanting program and other purposes herein authorized and such ascertained surplus shall be utilized by the bank for the investments herein authorized. But even assuming *arguendo* that UCPB's investing in SMC shares would have been allowed under the above provision, still, such investments could only have been made for and in behalf of the coconut farmers, and NOT for and in behalf of a single individual or Cojuangco alone.

Supreme Court E-Library

19. MERCANTILE LAW; BANKING LAWS; REPUBLIC ACT NO. 337 (GENERAL BANKING LAW), AS AMENDED; SECTION 83 THEREOF; DIRECTORS AND/OR OFFICERS OF A BANKING INSTITUTION ARE PROHIBITED FROM EITHER DIRECTLY OR INDIRECTLY BORROWING ANY OF THE DEPOSITS OF FUNDS OF SUCH BANKS EXCEPT WITH THE WRITTEN APPROVAL OF ALL THE DIRECTORS OF THE BANK; VIOLATED IN THE CASE AT BAR.— As President and Director of UCPB, Cojuangco was also violating Section 83 of Republic Act No. 337 or the General Banking Law, as amended by P.D. No. 1795, the law in force at that time which prohibited directors and/or officers of a banking institution from either directly or indirectly borrowing any of the deposits of funds of such banks *except* with the written approval of all directors of the bank. x x x Cojuangco and the Cojuangco companies having admitted in their joint Pre-Trial Brief that the SMC shares were actually purchased with proceeds from loans and credit advances from UCPB and the CIIF Oil Mills, and having foregone the opportunity during trial to show that a written authority from the UCPB's Board of Directors was secured before contracting said loans, ineluctably, **Cojuangco violated the old banking law.** That President Marcos issued Letter of Instructions (LOI) No. 926 (September 3, 1979) that paved the way for the acquisition of UCPB as the bank that would administer the lending of coco levy funds and which, in effect, exempted borrowings from the UCPB from the usual loan restrictions, is of no moment. Section 4 of LOI No. 926 provides: Sec. 4. Financial Borrowings — **All financial borrowings of the private corporation authorized to be organized as well as any Participating Mill to finance their respective capital expenditures including purchase of spare parts and inventories shall be expeditiously and promptly approved, and such borrowings are hereby declared exempt from restrictions/limitations**: on simple borrower's limitations; and on loans to corporations with interlocking directors, officers, stockholders, related interests and subsidiaries and affiliates**, it being understood that such lendings are in effect made to the coconut industry as a whole and not to any particular individual or entity**. Clearly, the exemption granted in LOI No. 926 only extended to *corporate* borrowings, not to individual borrowings.

20. CIVIL LAW; TRUST; CONSTRUCTIVE TRUST; DEFINED; IN THE CASE AT BAR, A CONSTRUCTIVE TRUST WAS FORMED IN FAVOR OF THE COCONUT FARMERS WHO SHOULD HAVE BENEFITED FROM THE COCONUT LEVY FUNDS.— It having been established that Cojuangco engaged in prohibited conflict-of-interest transactions by buying the SMC shares using coco levy funds being administered by the UCPB and CIIF Oil Mills for his own benefit, it follows that a **constructive trust** was formed in favor of the coconut farmers who should have benefited from such funds. The Civil Code provides: Art. 1455. When any trustee, guardian, or other person **holding a fiduciary relationship uses trust funds for the purchase of property and causes the conveyance to be made to him or to a third person, a trust is established by operation of law in favor of the person to whom the funds belong**. A constructive trust is "a right of property, real or personal, held by one party for the benefit of another; that there is a fiduciary relation between a trustee and a *cestui que trust* as regards certain property, real, personal, money or choses in action." That under Article 1455 there must be a breach of fiduciary relation and profit or gain resulting therefrom in order for a constructive trust to be created in favor of that legally entitled to it, *Huang v. Court of Appeals* underscores: A constructive trust is imposed where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it. The duty to convey the property arises because it was acquired through **fraud, duress, or abuse of confidence, undue influence** or mistake or **breach of fiduciary duty** or through the wrongful disposition of another's property.

21. ID.; ID.; ID.; FRAUD NEED NOT BE PRESENT; ELUCIDATED.— Fraud in this kind of trust in fact need not even be present. The landmark case of *Severino v. Severino* enlightens: A receiver, trustee, attorney, agent, or any other person occupying fiduciary relations respecting property or persons, is utterly disabled from acquiring for his own benefit the property committed to his custody for management. **This rule is entirely independent of the fact whether any fraud has intervened. No fraud in fact need be shown, and no excuse will be heard from the trustee.** It is to avoid the

Supreme Court E-Library

necessity of any such inquiry that the rule takes so general a form. **The rule stands on the moral obligation to refrain from placing one's self in positions which ordinarily excite conflicts between self-interest and integrity. It seeks to remove the temptation that might arise out of such a relation to serve one's self-interest at the expense of one's integrity and duty to another, by making it impossible to profit by yielding to temptation.** It applies universally to all who come within its principle.

22. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; BURDEN OF PROOF OF FRAUD; EXISTENCE OF A FIDUCIARY RELATION IS AN EXCEPTION THERETO.— Even assuming *arguendo* that fraud is material, the rule on the burden of proof of fraud, as the majority insists, does not apply in the present case. Authorities on evidence cite the existence of a fiduciary relation as an exception: The law, in the absence of the existence of any fiduciary relation, never presumes fraud, dishonesty, or bad faith; on the contrary, the presumption is in favor of good faith and honesty until the contrary appears x x x However, **when a fiduciary relation exists between the parties to a transaction, the burden of proof of its fairness is upon the fiduciary. He must show that there was no abuse of confidence, that he has acted in good faith, and the act by which he is benefited was the free, voluntary, and independent act of the other party, done with full knowledge of its purpose and effect**. Examples of such relationships may be seen in the case of husband and wife, attorney and client, **directors of a corporation and the corporation**, or any other relationship of an intimate and fiduciary character. A fiduciary seeking to profit by a transaction with the one who confided in him has the burden of showing that he communicated to the other not only the fact of his interest in the transaction, but all information he had which it was important for the other to know in order to enable him to judge the value of the property. x x x Since Cojuangco was a fiduciary, the burden of evidence on the fairness of the questionable transactions was shifted to him. He failed to discharge this burden. In other words, contrary to the view of the majority, it was not incumbent upon the Republic to adduce evidence on the particular details of the loans and credit advances for it was Cojuangco's burden to establish the

Supreme Court E-Library

regularity of these transactions. I am not "second-guessing," as the majority points out, for I am justified to deem the irregularity or illegality thereof as established after Cojuangco refused to discharge his burden. The intentional concealment of facts as to render secretive the assailed loan transactions entered into by a fiduciary must be, as enunciated by the above-cited rule, taken against Cojuangco, he being the fiduciary.

23. CRIMINAL LAW; REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); SECTION 3(i) THEREOF, VIOLATED IN THE CASE AT BAR.— Section 3(i) of Republic Act No. 3019 prohibits a public officer from becoming interested for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group.

24. ID.; REVISED PENAL CODE; ARTICLE 216 THEREOF; POSSESSION OF PROHIBITED INTEREST BY A PUBLIC OFFICER; VIOLATED IN THE CASE AT BAR.— Article 216 of the Revised Penal Code prohibits public officers from directly or indirectly, becoming interested in any contract or business in which it is his official duty to intervene. x x x With respect to Article 216 of the Revised Penal Code, Cojuangco had a hand in how the funds were to be utilized and in choosing the recipients of the loans and credit advances. For him to purchase SMC shares with proceeds from loans sourced from the coconut levy funds was a clear violation of Article 216. What is proscribed is the mere possession of the prohibited interest. It does not matter whether he actually approved the transaction or actually intervened in the contract or business. Moreover, proof that actual fraud was committed against the government is not required, for the act is punished because of the possibility that fraud may be committed or that the officer may place his personal interest above that of the government.

25. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; CATEGORIES OF FACT THAT NEED NOT BE PROVEN BY EVIDENCE.— The **categories of facts that need not be proven by evidence** were enumerated by this Court in one case that expounded on Section 1 of

Supreme Court E-Library

Rule 131 of the Rules of Court, as follows: *Burden of proof.* — Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his **claim or defense** by the amount of evidence required by law. Obviously, the burden of proof is, in the first instance, with the plaintiff who initiated the action. **But in the final analysis, the party upon whom the ultimate burden lies is to be determined by the pleadings, not by who is the plaintiff or the defendant**. The test for determining where the burden of proof lies is to ask which party to an action or suit will fail if he offers no evidence competent to show the facts averred as the basis for the relief he seeks to obtain, and based on the result of an inquiry, which party would be successful if he offers no evidence. In ordinary civil cases, **the plaintiff has the burden of proving the material allegations of the complaint which are denied by the defendant,** and **the defendant has the burden of proving the material allegations in his case where he sets up a new matter**. All facts in issue and relevant facts must, as a general rule, be proven by evidence except the following: (1) Allegations contained in the complaint or answer immaterial to the issues. (2) Facts which are admitted or which are not denied in the answer, provided they have been sufficiently alleged. (3) Those which are the subject of an agreed statement of facts between the parties; as well as those admitted by the party in the course of the proceedings in the same case. (4) Facts which are the subject of judicial notice. (5) Facts which are legally presumed. (6) Facts peculiarly within the knowledge of the opposite party. The effect of a presumption upon the burden of proof is to create the need of presenting evidence to overcome the *prima facie* case created thereby which if no proof to the contrary is offered will prevail; it does not shift the burden of proof.

BRION, *J., dissenting opinion:*

1. REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; PRE-TRIAL BRIEF; A PARTY'S STATEMENT IN THE PRE-TRIAL BRIEF IS NOT A MERE PROPOSAL BUT A DIRECT ADMISSION OF WHAT WOULD SUPPORT HIS/HER MATERIAL ALLEGATION; CASE AT BAR.— I agree with Justice Carpio Morales that Cojuangco did indeed admit in his pre-trial brief that the funds used in the purchase of

SMC shares were sourced from UCPB loans and CIIF Oil Mills advances. Cojuangco's *Pre-Trial Brief* made a categorical statement of the evidence he would present at the trial. This statement is quoted verbatim at page 5 hereof. x x x Justice Bersamin dismisses these statements as ***mere proposals*** of Cojuangco which do not constitute an admission that the funds in the purchase of the SMC shares came from the UCPB loans and the CIIF Oil Mills advances. "[T]he statement were merely being proposed, that is, they were not yet offered or were not yet intended as admissions of any fact stated therein." With due respect, Justice Bersamin's contention fails to consider a party's intent and representation in stipulating on the evidence he proposes to present during trial; by his stipulation, the party thereby ***claims – and thus admits*** – that the evidence he pointed to would substantiate the material averments in his pleadings. x x x In his *Pre-Trial Brief*, however, what he *generally* claimed in his Answer became *concrete* when he represented that these pieces of evidence consist of UCPB documents and testimonies of witnesses from UCPB and CIIF Oil Mills. As no evidence can be considered during trial unless they have been identified during pre-trial, this identified evidence substantiating the material allegation in his *Answer* is effectively an admission of what the various sources of funding were. In other words, the respondents identified the various sources of funds alleged in his *Answer* when he offered in his *Pre-Trial Brief* to support this allegation through documents from UCPB and the testimonies of witnesses from UCPB and CIIF Oil Mills on loan and credit advances. The statement in Cojuangco's *Pre-Trial Brief* is thus not a mere proposal but a direct admission of what would support his material allegation. Indeed, it is ridiculous for a party to stipulate on documents and witnesses he would present as evidence if these were not intended to support his position. To be sure, a defendant may choose not to present evidence should the plaintiff fail to support its claims, but his desistance is not due to any change of position but due to the lack of need to support his position; a defendant cannot radically change his theory of the case and deny his earlier statements depending on what the plaintiffs present as evidence.

2. ID.; ID.; MANNER OF MAKING ALLEGATIONS IN PLEADINGS; ALLEGATIONS WHICH ARE NOT SPECIFICALLY DENIED ARE DEEMED ADMITTED;

Supreme Court E-Library

APPLICATION IN THE CASE AT BAR.— Cojuangco also failed to specifically deny the allegation in paragraph 14(l) of the Republic's *Complaint* that UCPB and CIIF Oil Mills loans were used to purchase SMC stocks. Under the Rules of Court, what is not denied is deemed admitted. x x x [Cojuangco's] bare statement that he did not use coconut levy funds to acquire his shareholding in SMC is a mere general allegation that does not negate the Republic's material averment that UCPB loans, among others, funded the purchase of the SMC shares. Section 10, Rule 8 of the Rules of Court requires a defendant to "specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial." Otherwise, material averments in the complaint are deemed admitted. It was only in his *Pre-Trial Brief* that Cojuangco qualified his general averment that the SMC shares were not bought with coconut levy funds.

3. POLITICAL LAW; PRESIDENTIAL DECREE NO. 1468; COCONUT INDUSTRY INVESTMENT FUND (CIIF); CIIF OIL MILLS CREDIT ADVANCES ARE PUBLIC IN NATURE; EXPLAINED.— The determination of whether CIIF Oil Mills advances are public funds does not present a major hurdle. A simple tracing of the organization and funding of the CIIF Oil Mills to the coconut levy fund establishes the link that marks the fund as public. The coconut levy fund is a collective term referring to various funds that came from "levies on sale of copra or equivalent coconut products exacted for the most part from coconut farmers." x x x Pursuant to PD No. 1468 (which revised PD No. 961 or the Coconut Industry Code), portions of the CCSF and the CIDF that were not required for the replanting program and other authorized projects shall be used to "make investments in the form of shares of stock in corporations organized for the purpose of engaging in the establishment and operation of industries and commercial activities and other allied business undertakings relating to the coconut and other palm oil industries." The surplus of the CCSF and the CIDF came to be known as the Coconut Industry Investment Fund or CIIF, and the corporations in which the CIIF was invested were known as CIIF companies. In the 1993 *Republic v. Sandiganbayan* declared that — "x x x coconut levy funds being clearly affected with public interest, it follows

that the corporations formed and organized from those funds, and all assets acquired therefrom, should also be regarded as clearly affected with public interest." Since the CIIF Oil Mills and the holding companies were organized/acquired and funded using the coconut levy funds, it follows that the oil mills and all their assets, including their investments, are public funds. This is the basic reason underlying the partial judgment on the CIIF block of SMC shares; the funds used in the purchase of these shares are public so that the shares purchased rightfully belong to the Republic.

4. ID.; LETTER OF INSTRUCTION NO. 926 (SEPTEMBER 3, 1979); UNITED COCONUT PLANTERS BANK (UCPB); INVESTMENTS MADE BY UCPB, DIRECTLY OR INDIRECTLY, AS ADMINISTRATOR OF COCONUT LEVY FUND BECAME IMPRESSED WITH PUBLIC CHARACTER; EXPOUNDED.— With the government's acquisition of UCPB through the PCA using coconut levy funds, all collections from the imposition of the coconut levies were required to be deposited, interest free, with UCPB. The deposited coconut levy fund was primarily allotted to serve the credit requirements of the coconut farmers by providing them, upon proper authorization, with credit facilities at preferential rates. Through decrees subsequently promulgated by President Marcos, UCPB was also given "full power and authority" to invest the surplus of the coconut levy fund, in acquiring *shares of corporations engaged in the coconut and palm oil industries*. In this manner, UCPB became not only the depositary, but also the administrator, of the coconut levy fund. Thus, investments made by UCPB, directly or indirectly, as administrator of the coconut levy fund became impressed with public character; they were public investments even if made in the form of a loan to a private entity since they were sourced from a public fund and made pursuant to a declared national policy. In *Republic v. COCOFED*, we ruled that if the money is allocated for a special purpose and raised by a special means, it is public in character. Government funds deposited in a bank remain as government funds; "even assuming that these become commingled with other funds of the bank, this does not remove the character of the fund as a credit representing government funds thus deposited."

Supreme Court E-Library

5. ID.; ID.; ID.; AS A GOVERNMENT-OWNED OR CONTROLLED CORPORATION, UCPB'S ASSETS ARE GOVERNMENT ASSETS; FUNDS THAT IT LENDS OUT ARE PUBLIC FUNDS.— While functioning as depositary and administrator of the coconut levy fund, UCPB also continued to function as a commercial bank one of whose activities is the extension of loans to clients. Based on its genesis and the purposes it serves, UCPB is not simply a commercial bank; it is a bank owned and controlled by the government because of the ownership of its shares, the control that government exercises, and the purposes that it serves; it is specifically a government arm in the banking industry to serve the specific needs of coconut farmers through the administration of the deposited coco levy funds and by serving as a specialized coconut farmers' bank. As a government-owned or controlled corporation, UCPB's assets are government assets and its funds are subject to audit by the Commission on Audit. Thus, the funds that it lends out are public funds; any private ownership in its corporate structure is confined to the minority privately-held shares, which do not detract from the character of the bank as a government-owned and controlled corporation.

6. MERCANTILE LAW; CORPORATION CODE; CORPORATIONS; *ULTRA VIRES* ACTS OF CORPORATIONS; A LOAN OR ADVANCE TO A DIRECTOR IS NOT *PER SE ULTRA VIRES*; CASE AT BAR.— Section 45 of the Corporation Code states: Section 45. *Ultra vires acts of corporations*.—No corporation under this Code shall possess or exercise any corporate powers except those conferred by this Code or by its articles of incorporation and except such as are necessary or incidental to the exercise of the powers so conferred. It should be noted that what is *ultra vires* or beyond the power of the corporation must also be *ultra vires* or beyond the power of its board of directors to undertake. The powers of the board of directors, who under the law are authorized to exercise the powers of the corporation, are necessarily limited by restrictions imposed by law on the corporation, as these restrictions are necessarily imposed also on the board of directors who act in behalf of the corporation. As earlier stated, the purpose of UCPB was to provide readily available credit for coconut farmers. PD No. 755 confirms this purpose x x x Under these terms, if the

Supreme Court E-Library

Republic had been able to prove that the amount of the loans to Cojuangco were so substantial that they covered the funds reserved for the use of coconut farmers, then a case can be made that the grant of the loan was an *ultra vires* act. What the Republic claimed in its Memorandum of January 19, 2007 — that it should have been UCPB and CIIF Oil Mills and not the respondents who should have purchased the subject shares — would also apply. However, if the amount that Cojuangco borrowed consisted of funds that the UCPB could use for other investments, then no sufficient basis exists under the *ultra vires* rule to claim that the loans granted to Cojuangco for the purchase of SMC shares had been contrary to UCPB's purpose under PD No. 755. Under this situation, UCPB's grant of the loan for the purchase of SMC shares, by itself, would not constitute an *ultra vires* act, unless the Republic specifies some other irregularity whose consequence is to make the act *ultra vires*.

7. ID.; ID.; ID.; BREACH OF FIDUCIARY DUTIES AS DIRECTOR AND OFFICER OF UCPB; ESTABLISHED IN THE CASE AT BAR.— The grant of loans to Cojuangco, who was a director and officer of UCPB at the time that the shares were purchased, raises propriety questions under Sections 31 and 34 of the Corporation Code. x x x As early as 1929, the Court recognized the rule that directors of a corporation are bound to care for its property and manage its affairs in good faith. If a violation of these duties results in the waste of corporate assets or injury to corporate property, the directors, like other trustees, are liable for the waste or injury. If they perform acts clearly beyond their power, whereby loss ensues to the corporation, or dispose of its property or pay away its money without authority, they will be required to pay for the loss out of their private assets. x x x The directors of a corporation hold positions of trust and as such, they owe a duty of loyalty to their corporation. In case their interests conflict with those of the corporation, they cannot sacrifice the latter for their own advantage and benefit. This trust relationship is not a matter of statutory or technical law; it springs from the fact that directors have the control and guidance of corporate affairs and property and, hence, of the property and interests of the stockholders. In *Bailey v. Jacobs*, the Supreme Court of Pennsylvania held that directors and officers must act in utmost good faith and cannot

Supreme Court E-Library

deal with the funds and property of the corporation, nor utilize the influence and advantage of their offices, for any but the common interest. If they make a personal profit through the use of corporate assets, they must account for it to the stockholders. It is immaterial that their dealings may not have caused a loss or been harmful to the corporation; the test of liability is whether they have been unjustly enriched. On the surface, the present case is similar to *Bailey* where a director had used so-called advances from the corporation to purchase stocks of another company. Cojuangco appears to have betrayed the interests of UCPB when he purchased for himself the SMC shares using UCPB funds, when the same funds could have been used by UCPB to purchase the said shares for itself as administrator of the coconut levy funds. Thus, the benefits of the sale of the SMC shares should accrue to the UCPB. This conclusion, however, can be a rash judgment because the present case lacks the evidentiary support that *Bailey* enjoyed; the supporting evidence is not at all certain — a consequence of the Republic's failure to proceed to full-blown trial.

8. ID.; BANKING LAWS; REPUBLIC ACT NO. 337 (GENERAL BANKING ACT), AS AMENDED; VIOLATION OF SINGLE-BORROWERS LIMIT AND DOSRI RULES; NOT ESTABLISHED.— Cojuangco claims exemption from x x x [Sections 23 and 83 of the General Banking Act, as amended] on the strength of Letter of Instructions No. (*LOI*) 926. I agree with the *ponencia*, however, that Cojuangco cannot seek refuge under this LOI, since the exemption covers only the borrowings of participating oil mills and private corporations organized to serve as instruments to pool and coordinate the resources of the coconut farmers and oil millers, not those of individuals such as Cojuangco or the respondent corporations who acted as nominal stockholders. LOI 926, too, required the loans to be used to finance *capital expenditures*, not investments in shares of stock. Despite this view, however, I disagree that the Republic successfully established that these provisions were violated or that these laws can be the basis for the return of the SMC shares. To reiterate, the Republic has neither stated nor proved the amount of the UCPB loans taken to purchase the SMC shares or the unimpaired capital or the surplus of UCPB; it utterly failed to support the details of whatever loans had been taken with sufficient evidence. Thus,

Supreme Court E-Library

the Court cannot declare that the 15% limitation under the single borrower's limit was breached. Similarly, there can be no violation of the DOSRI rules where the manner under which the loan was taken was not alleged; the Republic failed to prove whether or not the UCPB board of directors approved the loans in question.

9. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; EXECUTIVE ORDER NO. 1 (1986); PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT; ILL-GOTTEN WEALTH; CLOSE ASSOCIATION WITH FORMER PRESIDENT MARCOS; NOT PROVEN IN THE CASE AT BAR.— A close examination of the records fails to reveal any specific allegation, much less proof, that Cojuangco amassed ill-gotten SMC shares because he is a relative or was a close associate of the late President Ferdinand Marcos. While the media may be replete with stories of Cojuangco's close relationship with President Marcos and his family, these stories are not evidence unless testified to by a competent witness or are materials that can be subject of judicial notice. At the most, what appears in the offered evidence in this case are admissions by Cojuangco of the positions he assumed in government, specifically at the PCA and at the UCPB. The Republic's *Reply* dated October 2, 2003, too, contained attached documents indicating the positions he assumed at the UCPB and its allied companies and in the CIIF oil mills or its holding companies. These documents, however, were never marked as exhibits and offered as evidence. Even if they had been so marked and offered, however, these may not suffice to prove "close association" under the standards of the jurisprudence on this point — not every senior official of the Marcos government falls under the category of a "close associate"; proof of this type of association has to be adduced. Again, the Republic failed on this point.

10. ID.; REPUBLIC ACT 1379; REQUISITES FOR FORFEITURE ACTION.— [R]esort to a RA No. 1379 forfeiture action is appropriate if a subject and an object exist under the terms of this law. Specifically, there must be: (1) A **subject** or a public officer or employee, who is **any person holding any public office or employment** by virtue of an appointment, election or contract, *and* any person holding any office or employment, by appointment or contract, in any State owned or controlled

Supreme Court E-Library

corporation or enterprise; (2) An **object** which refers to **the properties** acquired by the public officer during his incumbency **which are manifestly out of proportion to his salary** as officer and to his other lawful income and the income from legitimately acquired properties.

11. ID.; ID.; ID.; PRIOR INQUIRY SIMILAR TO A PRELIMINARY INVESTIGATION IN CRIMINAL CASES IS REQUIRED; PRIOR INQUIRY, ABSENT IN THE CASE AT BAR.— Procedurally, Section 2 of RA No. 1379, as amended, requires a prior inquiry similar to a preliminary investigation in criminal cases to be made by the Ombudsman before a forfeiture proceeding can be initiated before the Court by the Solicitor General. In the present case, no prior inquiry appeared to have been conducted. Thus, Cojuangco raised this defense in his *Answer*, together with the time bar in bringing the complaint because of its proximity to an election. **Thereafter, the Republic simply disregarded its RA No. 1379 cause of action and does not appear to have ever undertaken any corrective action to continue to address the lapses that Cojuangco noted in his *Answer*.**

12. ID.; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; EXECUTIVE ORDER NO. 1 (1986); ILL-GOTTEN WEALTH; REQUISITES FOR FORFEITURE ACTION; NOT ESTABLISHED IN THE CASE AT BAR.— EO No. 1, in relation with EO Nos. 2, 14 and 14-A, is another law that authorizes the government to recover ill-gotten wealth. A recovery action under EO No. 1 requires **(1) a subject defendant,** which refers to the former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and **close associates. (2) an object** or the ill-gotten wealth, which refers to assets and properties (in the form of bank accounts, deposits, trust accounts, shares of stocks, buildings, shopping centers, condominium, mansions, residences, estates, and other kinds of real and personal properties in the Philippines and in various countries) belonging to the defendants. This can include business enterprises and associations owned or controlled by the defendants, during the Marcos administration, directly or through nominees; **(3) the mode of acquisition**, through which the ill-gotten wealth was acquired, directly or indirectly, (a) through or as a result of the improper or illegal use of or conversion of funds or properties owned by the Government of the

Supreme Court E-Library

Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or *(b) by taking undue advantage of their office, authority, influence, connections or relationship.* **(4) prejudice to the government**, as the act/s of the defendant/s result in their unjust enrichment and causing grave damage to the Filipino people and the Republic of the Philippines. x x x A reading of the complaint shows that the Republic's action for recovery under EO No. 1 of the Cojuangco block of SMC shares was premised on Cojuangco's act of supposedly *taking undue advantage of official position or authority*, resulting in his unjust enrichment and grave damage and prejudice to the State. Thus, **it was crucial for the Republic to prove that, at the time the subject shares were acquired, Cojuangco occupied an official position.** While Cojuangco admitted that he (a) served as PCA Director and as President and Director of the UCPB; (b) acquired the SMC shares in 1983 and (c) used proceeds of loans and advances from UCPB and the CIIF Oil Mills, the Republic's submitted evidence and Cojuangco's admissions did not sufficiently prove that the details that EO No. 1 required, specifically, the period of Cojuangco's service as a public officer; the details of the loans and advances secured; whether and how much of these loans and advances funded the purchase of SMC shares; the details of the purchases made, when, by whom, for how much; the unjust enrichment on the part of Cojuangco and the prejudice to the government, in the manner done in *Bailey*. **All these omissions cannot but be evidentiary gaps resulting from the counsel's gross negligence that should preclude the Court from entering a judgment of forfeiture in favor of the government.**

13. LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; NEGLIGENCE OF COUNSEL BINDS THE CLIENT; EXCEPTIONS.— That negligence of counsel binds the client is a strong and settled rule in jurisprudence. This is based on the rule that any act performed by a counsel within the scope of his general or implied authority is regarded as an act of his client. Consequently, the mistake or negligence of counsel may result in the rendition of an unfavorable judgment against the client. The reason for this rule is to avoid the foreseeable tendency of every losing party to raise the negligence of his or her counsel to escape an adverse decision;

Supreme Court E-Library

experience shows that very few graciously accept a losing verdict and parties would go to great lengths and seize every opportunity to avoid a loss, although the attempt at evasion is to the detriment of justice and our justice system. It is equally settled, too, with the same strength and emphasis that once the rule on mistake or negligence of counsel deserts its proper office as an aid to justice, and on the contrary becomes a hindrance and its chief enemy, the rigors of the rule must be relaxed to admit of exceptions and thereby prevent a miscarriage of justice. In other words, the Court has the power to consider a particular case an exception to the operation of the negligence of counsel rule whenever the purposes of justice require it. What should guide judicial action as a norm is that a party should be given the fullest opportunity to establish the merits of his action or defense, rather than allow him to lose life, honor or property because of technicalities or acts or omissions that denied him of his day in court. Thus, the rule that the negligence of counsel binds the client admits of exceptions. The recognized exceptions are: (1) where reckless or gross negligence of counsel deprives the client of due process of law, (2) when its application will result in outright deprivation of the client's liberty or property or (3) where the interests of justice so require. In such cases, courts must step in and accord relief to a party-litigant.

14. ID.; ID.; ID.; ID.; ID.; ID.; GROSS NEGLIGENCE; DEFINED; PRESENT IN THE CASE AT BAR.— Gross negligence has been defined as the want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It is the thoughtless disregard of consequences without exerting any effort to avoid them. In this case, the omissions of Republic's counsel in handling its case has heretofore been itemized and discussed and need not be mentioned again. Suffice it to say that its failure to present evidence it had in its possession and those that it could have easily availed of, considered alone, already amounted to an abandonment or total disregard of its case. They show conscious indifference to or utter disregard of the possible adverse repercussions to the client. Such chronic inaction was present in this case when the Republic's counsel exhibited it as early as the pre-trial, at its motion for summary judgment where no less than the Sandiganbayan commented on the state of the counsel's preparation, and in the all-important

Supreme Court E-Library

presentation of evidence stage when counsel, without much thought, marked as evidence materials that need not even be marked and offered as evidence, and thereafter refused to go to trial. These acts cannot but constitute gross negligence. x x x The uniqueness of the negligence in this case lies in the patent ineptitude that counsel for the Republic committed, as it passively allowed the government to be stripped of its interests in valuable assets claimed to be ill gotten wealth. The glaring errors of the counsel for the Republic were not minor errors in the exercise of discretion; the voluminous records of this case are replete with instances when counsel's attention was called concerning gaps in its case and its evidence, both by the Sandiganbayan and by the respondents. The Sandiganbayan even noted the apparent ignorance of the Republic's counsel regarding the case that it handled — its inability, despite the lapse of a substantial length of time, to respond to the questions of the Sandiganbayan and to identify the documents that it would present. These warnings alone should serve as a gauge to the Court of how egregious the negligence had been.

15. CIVIL LAW; ESTOPPEL; THE STATE IS NOT ESTOPPED FROM QUESTIONING THE ACTS OF ITS OFFICIALS IF THEY ARE ERRONEOUS AND MORE SO IF THEY ARE IRREGULAR.— [O]ur jurisprudence teaches us that the State is never estopped from questioning the acts of its officials, if they are erroneous, and more so if they are irregular. Such acts involve plain bureaucratic venality which leaves large and easily identifiable traces of neglect of duty. In *Republic v. Aquino*, we applied this principle to the failure of the government to oppose an application for land registration. In *Sharp International Marketing v. Court of Appeals*, we held that the government is not bound by a highly irregular contract entered into by a former Secretary. We also declared, in *Heirs of Reyes v. Republic*, that even if the Office of the Solicitor General failed to question a patently unconstitutional compromise agreement between the Director of Lands and Forest Development with private individuals, the government cannot be bound by it; we branded the acts of the government agent as a "blatant abandonment of their [duties]" and a display of their "gross incompetence."

16. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS CLAUSE; REQUIREMENT OF

Supreme Court E-Library

DUE PROCESS, WHEN SATISFIED.— The requirements of due process are satisfied if the following conditions are present: (1) there is a court or tribunal clothed with judicial power to hear and determine the matter before it; (2) jurisdiction is lawfully acquired over the person of the defendant or over the property which is the subject of the proceedings; (3) the defendant is given an opportunity to be heard; and (4) judgment is rendered upon a lawful hearing. Substantively, what underlies due process is the rule of reason; it is a rule against arbitrariness and injustice measured under the standards of reason. Procedurally, the fundamental requirement of due process involves the opportunity to be heard at a meaningful time and in a meaningful manner. Whether in the substantive or in the procedural signification, due process must comport with the deepest notions of what is fair and right and just.

17. ID.; ID.; ID.; ID.; RIGHT TO DUE PROCESS; REMAND OF THE CASE FOR A FULL-BLOWN TRIAL ON THE MERITS, PROPER.— On a superficial consideration, the proceedings before the Sandiganbayan appear to have complied with all that due process demands in a judicial proceeding. The Sandiganbayan granted the government the opportunity to be heard and was not remiss in reminding the Republic's counsel of its view of the status of the government's case. That counsel chose to formally offer as evidence documents that were already on record or subject to judicial notice, and that it miserably failed to support its stated claims, do not appear to be a violation of the requirements of procedural due process. However, ***the right to due process in our legal system does not merely rely on technical and pedantic application of procedural formalities; it involves as well the consideration of the substance of the affected underlying rights whose denial under unreasonable circumstances is equivalent to the loss of day in court that is entitled to redress and correction to afford justice to all.*** **The denial, as it transpired in this case, is unique but is not any less a basic and inherent unfairness.** The Court is now faced with a situation where the conclusions of the Sandiganbayan are valid, *based on the evidence formally offered,* but are contradicted by existing evidence that counsel chose not to offer and evidence that, by omission, it chose not to explore. x x x The Court stands to participate in this unfairness and injustice if it stands idly and

Supreme Court E-Library

let the government be deprived of valuable assets, or the chance to prove its interest in these assets, knowing fully well the gross incompetence and negligence of its counsel that brought on the injustice. If the Court is convinced that gross injustice transpired brought on by the failure on the part of the Republic to present its case due to the gross negligence of its counsel, an outright dismissal of the present petition would not comply with the due process requirements enshrined in our Constitution. Let it be noted that the Republic's case is not totally without merit. Records are replete with indications that a meritorious case can be made out for the recovery sought if only the Republic can have its day in court. ***Under these circumstances, the Court's remedy can be no less than a continuation of the proceedings of this case through its remand of the case for a full-blown trial on the merits in proceedings that accord the government a real chance to present all of its evidence.*** To be sure, the Court is not wanting in authority to impose this remedy; it is a well-established and accepted doctrine that rules of procedure may be modified at any time to become effective at once, so long as the change does not affect vested rights. In short, this Court can adapt the rules of procedure, as its response to the duty and obligation to act in the higher interests of justice.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Estelito P. Mendoza, Lorenzo G. Timbol and *Eirene Jhone E. Aguila* for Eduardo Cojuangco, Jr.

Angara Abello Concepcion Regala & Cruz and *Valmores & Valmores Law offices* for COCOFED, *et al.*

Ubano Ancheta Sianghio & Lozada for Heirs of M.C. Lobregat.

Catapang Tiongco Torres & Martin and *Sayuno Mendoza & San Jose Law Offices* for CIIF Companies & 14 Holdings Companies.

Diño Borja Sarabia Factoran & Tadena Law Offices for Danilo S. Ursua.

Ponce Enrile Reyes & Manalastas for Juan Ponce Enrile.

Wigberto E. Tañada for petitioner-intervenor.

Supreme Court E-Library

*Jose A. Suin*g for movants-heirs of the Deceased Dionisia, Nicolas, Cornelio, Maria, Aniceta & Antonia, all surnamed Bansil.
Efren Moncopa for petitioners-intervenors.

D E C I S I O N

BERSAMIN, *J.*:

For over two decades, the issue of whether the sequestered sizable block of shares representing 20% of the outstanding capital stock of San Miguel Corporation (SMC) at the time of acquisition belonged to their registered owners or to the coconut farmers has remained unresolved. Through this decision, the Court aims to finally resolve the issue and terminate the uncertainty that has plagued that sizable block of shares since then.

These consolidated cases were initiated on various dates by the Republic of the Philippines (Republic) *via* petitions for *certiorari* in G.R. Nos. 166859[1] and 169023,[2] and *via* petition for review on *certiorari* in 180702,[3] the first two petitions being brought to assail the following resolutions issued in Civil Case No. 0033-F by the Sandiganbayan, and the third being brought to appeal the adverse decision promulgated on November 28, 2007 in Civil Case No. 0033-F by the Sandiganbayan.

Specifically, the petitions and their particular reliefs are as follows:

(a) G.R. No. 166859 (petition for *certiorari*), to assail the resolution promulgated on December 10, 2004[4] denying the Republic's *Motion For Partial Summary Judgment*;

(b) G.R. No. 169023 (petition for *certiorari*), to nullify and set aside, *firstly*, the resolution promulgated on October 8,

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[1] *Rollo* (G.R. No. 166859), pp. 2-48.

[2] *Rollo* (G.R. No. 169023), pp. 2-39.

[3] *Rollo* (G.R. No. 180702), Vol. 2, pp. 397-459.

[4] *Rollo* (G.R. No. 166859), pp. 49-63.

Supreme Court E-Library

2003,[5] and, *secondly*, the resolution promulgated on June 24, 2005[6] modifying the resolution of October 8, 2003; and

(c) G.R. No. 180702 (petition for review on *certiorari*), to appeal the decision promulgated on November 28, 2007.[7]

ANTECEDENTS

On July 31, 1987, the Republic commenced Civil Case No. 0033 in the Sandiganbayan by complaint, impleading as defendants respondent Eduardo M. Cojuangco, Jr. (Cojuangco) and 59 individual defendants. On October 2, 1987, the Republic amended the complaint in Civil Case No. 0033 to include two additional individual defendants. On December 8, 1987, the Republic further amended the complaint through its *Amended Complaint [Expanded per Court-Approved Plaintiff's 'Manifestation/Motion Dated Dec. 8, 1987]* albeit dated October 2, 1987.

More than three years later, on August 23, 1991, the Republic once more amended the complaint apparently to avert the nullification of the writs of sequestration issued against properties of Cojuangco. The amended complaint dated August 19, 1991, designated as *Third Amended Complaint [Expanded Per Court-Approved Plaintiff's Manifestation/Motion Dated Dec. 8, 1987]*,[8] impleaded in addition to Cojuangco, President Marcos, and First Lady Imelda R. Marcos nine other individuals, namely: Edgardo J. Angara, Jose C. Concepcion, Avelino V. Cruz, Eduardo U. Escueta, Paraja G. Hayudini, Juan Ponce Enrile, Teodoro D. Regala, and Rogelio Vinluan, collectively, the ACCRA lawyers, and Danilo Ursua, and 71 corporations.

On March 24, 1999, the Sandiganbayan allowed the subdivision of the complaint in Civil Case No. 0033 into eight

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[5] *Rollo* (G.R. No. 169023), pp. 40-55.

[6] *Id.*, pp. 74-82.

[7] *Rollo* (G.R. No. 180702), Vol. 2, pp. 461-514.

[8] *Id.*, pp. 516-590.

Supreme Court E-Library

complaints, each pertaining to distinct transactions and properties and impleading as defendants only the parties alleged to have participated in the relevant transactions or to have owned the specific properties involved. The subdivision resulted into the following subdivided complaints, to wit:

	Subdivided Complaint	Subject Matter
1.	Civil Case No. 0033-A	Anomalous Purchase and Use of First United Bank (now United Coconut Planters Bank)
2.	Civil Case No. 0033-B	Creation of Companies Out of Coco Levy Funds
3.	Civil Case No. 0033-C	Creation and Operation of Bugsuk Project and Award of ₱998 Million Damages to Agricultural Investors, Inc.
4.	Civil Case No. 0033-D	Disadvantageous Purchases and Settlement of the Accounts of Oil Mills Out of Coco Levy Funds
5.	Civil Case No. 0033-E	Unlawful Disbursement and Dissipation of Coco Levy Funds
6.	Civil Case No. 0033-F	Acquisition of SMC shares of stock
7.	Civil Case No. 0033-G	Acquisition of Pepsi-Cola
8.	Civil Case No. 0033-H	Behest Loans and Contracts

In Civil Case No. 0033-F, the individual defendants were Cojuangco, President Marcos and First Lady Imelda R. Marcos, the ACCRA lawyers, and Ursua. Impleaded as corporate defendants were Southern Luzon Oil Mills, Cagayan de Oro Oil Company, Incorporated, Iligan Coconut Industries, Incorporated, San Pablo Manufacturing Corporation, Granexport Manufacturing Corporation, Legaspi Oil Company, Incorporated, collectively referred to herein as the CIIF Oil Mills, and their 14 holding companies, namely: Soriano Shares, Incorporated, Roxas Shares, Incorporated, Arc Investments, Incorporated, Toda Holdings, Incorporated, ASC Investments, Incorporated, Randy Allied Ventures, Incorporated, AP Holdings, Incorporated, San Miguel Corporation Officers, Incorporated, Te Deum

Resources, Incorporated, Anglo Ventures, Incorporated, Rock Steel Resources, Incorporated, Valhalla Properties, Incorporated, and First Meridian Development, Incorporated.

Allegedly, Cojuangco purchased a block of 33,000,000 shares of SMC stock through the 14 holding companies owned by the CIIF Oil Mills. For this reason, the block of 33,133,266 shares of SMC stock shall be referred to as the CIIF block of shares.

Also impleaded as defendants in Civil Case No. 0033-F were several corporations[9] alleged to have been under Cojuangco's control and used by him to acquire the block of shares of SMC stock totaling 16,276,879 at the time of acquisition (representing approximately 20% percent of the capital stock of SMC). These corporations are referred to as Cojuangco corporations or companies, to distinguish them from the CIIF Oil Mills. Reference hereafter to Cojuangco and the Cojuangco corporations or

[9] Namely: Agricultural Consultancy Services, Incorporated, Archipelago Realty Corporation, Autonomous Development Corporation, Balete Ranch, Incorporated, Black Stallion Ranch, Incorporated, Christensen Plantation Company, Cocoa Investors, Incorporated, Davao Agicultural Aviation, Incorporated, Discovery Realty Corporation, Dream Pastures, Incorporated, Echo Ranch, Incorporated, ECJ & Sons Agri. Ent., Incorporated, Far East Ranch, Incorporated, FILSOV Shipping Company, Incorporated, First United Transport, Incorporated, Habagat Realty Development, Incorporated, HYCO Agricultural, Incorporated, Kalawakan Resorts, Incorporated, Kaunlaran Agricultural Corporation, Labayog Air Terminals, Incorporated, Landair International Marketing Corporation, LHL Cattle Corporation, Meadow Lark Plantations, Incorporated, Metroplex Commodities, Incorporated, Misty Mountain Agricultural Corporation, Northeast Contract Traders, Incorporated, Northern Carriers Corporation, Oceanside Maritime Enterprises, Incorporated, Oro Verde Services, Incorporated, Pastoral Farms, Incorporated, PCY Oil Manufacturing Corporation, Philippine Radio Corporation, Incorporated, Philippine Technologies, Incorporated, Primavera Farms, Incorporated, Punong-Bayan Housing Development Corporation, Pura Electric Company, Incorporated, Radio Audience Developers Integrated Organization, Incorporated, Radio Pilipino Corporation, Rancho Grande, Incorporated, Reddee Developers, Incorporated, San Esteban Development Corporation, Silver Leaf Plantation, Incorporated, Southern Services Traders, Incorporated, Southern Star Cattle Corporation, Spade 1 Resorts Corporation, Tagum Agricultural Development Corporation, Thilagro Edible Oil Mills, Incorporated, Unexplored Land Developers, Incorporated, Ventures Securities, Incorporated, Verdant Plantations, Inc., Vesta Agricultural Corporation, and Wings Resorts Corporation.

Supreme Court E-Library

companies shall be as Cojuangco, *et al.*, unless the context requires individualization.

The material averments of the Republic's *Third Amended Complaint* (*Subdivided*)[10] in Civil Case No. 0033-F included the following:

12. Defendant Eduardo 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. Having fully established himself as the undisputed "coconut king" with unlimited powers to deal with the coconut levy funds, the stage was now set for Defendant Eduardo M. Cojuangco, Jr. to launch his predatory forays into almost all aspects of Philippine economic activity namely: softdrinks, agribusiness, oil mills, shipping, cement manufacturing, textile, as more fully described below.

14. Defendant Eduardo Cojuangco, Jr. taking undue advantage of his association, influence and connection, acting in unlawful concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, and the individual defendants, embarked upon devices, schemes and stratagems, including the use of defendant corporations as fronts, to unjustly enrich themselves at the expense of Plaintiff and the Filipino people, such as when he misused coconut levy funds to buy out majority of the outstanding shares of stock of San Miguel Corporation in order to control the largest agri-business, foods and beverage company in the Philippines, more particularly described as follows:

(a) Having control over the coconut levy, Defendant Eduardo M. Cojuangco invested the funds in diverse activities, such as the various businesses SMC was engaged in (*e.g.* large beer, food, packaging, and livestock);

(b) He entered SMC in early 1983 when he bought most of the 20 million shares Enrique Zobel owned in the Company. The shares, worth $49 million, represented 20% of SMC;

(c) Later that year, Cojuangco also acquired the Soriano stocks through a series of complicated and secret agreements, a key

[10] *Rollo* (G.R. No. 180702), Vol. 2, pp. 516-545.

Supreme Court E-Library

feature of which was a "voting trust agreement" that stipulated that Andres, Jr. or his heir would proxy over the vote of the shares owned by Soriano and Cojuangco. This agreement, which accounted for 30% of the outstanding shares of SMC and which lasted for five (5) years, enabled the Sorianos to retain management control of SMC for the same period;

(d) Furthermore, in exchange for an SMC investment of $45 million in non-voting preferred shares in UCPB, Soriano served as the vice-chairman of the supposed bank of the coconut farmers, UCPB, and in return, Cojuangco, for investing funds from the coconut levy, was named vice-chairman of SMC;

(e) Consequently, Cojuangco enjoyed the privilege of appointing his nominees to the SMC Board, to which he appointed key members of the ACCRA Law Firm (herein Defendants) instead of coconut farmers whose money really funded the sale;

(f) The scheme of Cojuangco to use the lawyers of the said Firm was revealed in a document which he signed on 19 February 1983 entitled "Principles and Framework of Mutual Cooperation and Assistance" which governed the rules for the conduct of management of SMC and the disposition of the shares which he bought.

(g) All together, Cojuangco purchased 33 million shares of the SMC through the following 14 holding companies:

a) Soriano Shares, Inc.	1,249,163
b) ASC Investors, Inc.	1,562,449
c) Roxas Shares, Inc.	2,190,860
d) ARC Investors, Inc.	4,431,798
e) Toda Holdings, Inc.	3,424,618
f) AP Holdings, Inc.	1,580,997
g) Fernandez Holdings, Inc.	838,837
h) SMC Officers Corps., Inc.	2,385,987
i) Te Deum Resources, Inc.	2,674,899
j) Anglo Ventures Corp.	1,000,000
k) Randy Allied Ventures, Inc.	1,000,000
l) Rock Steel Resources, Inc.	2,432,625
m) Valhalla Properties Ltd., Inc.	1,361,033
n) First Meridian Development, Inc.	1,000,000
	33,133,266

Supreme Court E-Library

3.1. The same fourteen companies were in turn owned by the following six (6) so-called CIIF Companies which were:

a) San Pablo Manufacturing Corp.	19%
b) Southern Luzon Coconut Oil Mills, Inc.	11%
c) Granexport Manufacturing Corporation	19%
d) Legaspi Oil Company, Inc.	18%
e) Cagayan de Oro Oil Company, Inc.	18%
f) Iligan Coconut Industries, Inc.	15%
	100%

(h) Defendant Corporations are but "shell" corporations owned by interlocking shareholders who have previously admitted that they are just "nominee stockholders" who do not have any proprietary interest over the shares in their names. The respective affidavits of the following, namely: Jose C. Concepcion, Florentino M. Herrera III, Teresita J. Herbosa, Teodoro D. Regala, Victoria C. de los Reyes, Manuel R. Roxas, Rogelio A. Vinluan, Eduardo U. Escueta and Franklin M. Drilon, who were all, at the time they became such stockholders, lawyers of the Angara Abello Concepcion Regala & Cruz (ACCRA) Law Offices, the previous counsel who incorporated said corporations, prove that they were merely nominee stockholders thereof.

(i) Mr. Eduardo M. Cojuangco, Jr., acquired a total of 16,276,879 shares of San Miguel Corporation from the Ayala group: of said shares, a total of 8,138,440 (broken into 7,128,227 Class A and 1,010,213 Class B shares) were placed in the names of Meadowlark Plantations, Inc. (2,034,610) and Primavera Farms, Inc. (4,069,220). The Articles of Incorporation of these three companies show that Atty. Jose C. Concepcion of ACCRA owns 99.6% of the entire outstanding stock. The same shareholder executed three (3) separate "Declaration of Trust and Assignment of Subscription": in favor of a BLANK assignee pertaining to his shareholdings in Primavera Farms, Inc., Silver Leaf Plantations, Inc. and Meadowlark Plantations, Inc.

(k) The other respondent Corporations are owned by interlocking shareholders who are likewise lawyers in the ACCRA Law Offices and had admitted their status as "nominee stockholders" only.

(k-1) The corporations: Agricultural Consultancy Services, Inc., Archipelago Realty Corporation, Balete

Ranch, Inc., Black Stallion Ranch, Inc., Discovery Realty Corporation, First United Transport, Inc., Kaunlaran Agricultural Corporation, LandAir International Marketing Corporation, Misty Mountains Agricultural Corporation, Pastoral Farms, Inc., Oro Verde Services, Inc. Radyo Filipino Corporation, Reddee Developers, Inc., Verdant Plantations, Inc. and Vesta Agricultural Corporation, were incorporated by lawyers of ACCRA Law Offices.

(k-2) With respect to PCY Oil Manufacturing Corporation and Metroplex Commodities, Inc., they are controlled respectively by HYCO, Inc. and Ventures Securities, Inc., both of which were incorporated likewise by lawyers of ACCRA Law Offices.

(k-3) The stockholders who appear as incorporators in most of the other Respondents corporations are also lawyers of the ACCRA Law Offices, who as early as 1987 had admitted under oath that they were acting only as "nominee stockholders."

(l) These companies, which ACCRA Law Offices organized for Defendant Cojuangco to be able to control more than 60% of SMC shares, were funded by institutions which depended upon the coconut levy such as the UCPB, UNICOM, United Coconut Planters Assurance Corp. (COCOLIFE), among others. Cojuangco and his ACCRA lawyers used the funds from 6 large coconut oil mills and 10 copra trading companies to borrow money from the UCPB and purchase these holding companies and the SMC stocks. Cojuangco used $150 million from the coconut levy, broken down as follows:

Amount (in million)	Source	Purpose
$22.26	Oil Mills	equity in holding companies
$65.6	Oil Mills	loan to holding companies
$61.2	UCPB	loan to holding companies [164]

The entire amount, therefore, came from the coconut levy, some passing through the Unicom Oil mills, others directly from the UCPB.

Supreme Court E-Library

(m) With his entry into the said Company, it began to get favors from the Marcos government, significantly the lowering of the excise taxes (sales and specific taxes) on beer, one of the main products of SMC.

(n) Defendant Cojuangco controlled SMC from 1983 until his co-defendant Marcos was deposed in 1986.

(o) Along with Cojuangco, Defendant Enrile and ACCRA also had interests in SMC, broken down as follows:

% of SMC Cojuangco	Owner
31.3%	coconut levy money
18%	companies linked to Cojuangco
5.2%	government
5.2%	SMC employee retirement fund
Enrile & ACCRA	
1.8%	Enrile
1.8%	Jaka Investment Corporation
1.8%	ACCRA Investment Corporation

15. Defendants Eduardo Cojuangco, Jr., Edgardo J. Angara, Jose C. Concepcion, Teodoro Regala, Avelino Cruz, Rogelio Vinluan, Eduardo U. Escueta and Paraja G. Hayudini of the Angara Concepcion Cruz Regala and Abello law offices (ACCRA) plotted, devised, schemed, conspired and confederated with each other in setting up, through the use of coconut levy funds, the financial and corporate framework and structures that led to the establishment of UCPB, UNICOM, COCOLIFE, COCOMARK. CIC, and more than twenty other coconut levy-funded corporations, including the acquisition of San Miguel Corporation shares and its institutionalization through presidential directives of the coconut monopoly. Through insidious means and machinations, ACCRA, being the wholly-owned investment arm, ACCRA Investments Corporation, became the holder of approximately fifteen million shares representing roughly 3.3% of the total outstanding capital stock of UCPB as of 31 March 1987. This ranks ACCRA Investments Corporation number 44 among the top 100 biggest stockholders of UCPB which has approximately

Supreme Court E-Library

1,400,000 shareholders. On the other hand, the corporate books show the name Edgardo J. Angara as holding approximately 3,744 shares as of February, 1984.

16. 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, 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.[11]

On June 17, 1999, Ursua and Enrile each filed his separate *Answer with Compulsory Counterclaims*.

Before filing their answer, the ACCRA lawyers sought their exclusion as defendants in Civil Case No. 0033, averring that even as they admitted having assisted in the organization and acquisition of the companies included in Civil Case No. 0033, they had acted as mere nominees-stockholders of corporations involved in the sequestration proceedings pursuant to office practice. After the Sandiganbayan denied their motion, they elevated their cause to this Court, which ultimately ruled in their favor in the related cases of *Regala, et al. v. Sandiganbayan, et al.*[12] and *Hayudini v. Sandiganbayan, et al.*,[13] as follows:

WHEREFORE, IN VIEW OF THE FOREGOING, the Resolutions of respondent Sandiganbayan (First Division) promulgated on March 18, 1992 and May 21, 1992 are hereby ANNULLED and SET ASIDE. Respondent Sandiganbayan is further ordered to exclude petitioners Teodoro D. Regala, Edgardo J. Angara, Avelino V. Cruz, Jose C. Concepcion, Victor P. Lazatin, Eduardo U. Escueta and Paraja G. Hayudini as parties-defendants in SB Civil Case No. 0033 entitled "*Republic of the Philippines v. Eduardo Cojuangco, Jr., et al.*"

SO ORDERED.

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[11] *Id.,* pp. 525-533.

[12] G.R. No. 105938, September 20, 1996, 262 SCRA 122.

[13] *Ibid.*

Supreme Court E-Library

Conformably with the ruling, the Sandiganbayan excluded the ACCRA lawyers from the case on May 24, 2000.[14]

On June 23, 1999, Cojuangco filed his *Answer to the Third Amended Complaint,*[15] averring the following affirmative defenses, to wit:

> 7.00. The Presidential Commission on Good Government (PCGG) is without authority to act in the name and in behalf of the "Republic of the Philippines."
>
> 7.01. As constituted in E.O. No. 1, the PCGG was composed of "Minister Jovito R. Salonga, as Chairman, Mr. Ramon Diaz, Mr. Pedro L. Yap, Mr. Raul Daza and Ms. Mary Concepcion Bautista, as Commissioners." When the complaint in the instant case was filed, Minister Salonga, Mr. Pedro L. Yap and Mr. Raul Daza had already left the PCGG. By then the PCGG had become *functus officio*.
>
> 7.02. The Sandiganbayan has no jurisdiction over the complaint or over the transaction alleged in the complaint.
>
> 7.03. The complaint does not allege any cause of action.
>
> 7.04. The complaint is not brought in the name of the real parties in interest, assuming any cause of action exists.
>
> 7.05. Indispensable and necessary parties have not been impleaded.
>
> 7.06. There is improper joinder of causes of action (Sec. 6, Rule 2, Rules of Civil Procedure). The causes of action alleged, if any, do not arise out of the same contract, transaction or relation between the parties, nor are they simply for money, or are of the same nature and character.
>
> 7.07. There is improper joinder of parties defendants (Sec. 11, Rule 3, Rules of Civil Procedure).The causes of action alleged as to defendants, if any, do not involve a single transaction or a related series of transactions. Defendant is thus compelled to

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[14] Decision dated November 28, 2007 in Civil Case No. 0033-F, *supra*, note 7, p. 478.

[15] *Rollo*, (G.R. 180702), Vol. 2, pp. 591-610.

litigate in a suit regarding matters as to which he has no involvement. The questions of fact and law involved are not common to all defendants.

7.08. In so far as the complaint seeks the forfeiture of assets allegedly acquired by defendant "manifestly out of proportion to their salaries, to their other lawful income and income from legitimately acquired property," under R.A. 1379, the "previous inquiry similar to preliminary investigation in criminal cases" required to be conducted under Sec. 2 of that law before any suit for forfeiture may be instituted, was not conducted; as a consequence, the Court may not acquire and exercise jurisdiction over such a suit.

7.09. The complaint in the instant suit was filed July 31, 1987, or within one year before the local election held on January 18, 1988. If this suit involves an action under R.A. 1379, its institution was also in direct violation of Sec. 2, R.A. No. 1379.

7.10. E.O. No. 1, E.O. No. 2, E.O. No. 14 and 14-A, are unconstitutional. They violate due process, equal protection, *ex post facto* and bill of attainder provisions of the Constitution.

7.11. Acts imputed to defendant which he had committed were done pursuant to law and in good faith.

The Cojuangco corporations' *Answer*[16] had the same tenor as the *Answer* of Cojuangco.

In his own *Answer with Compulsory Counterclaims*,[17] Ursua averred affirmative and special defenses.

In his own *Answer with Compulsory Counterclaims*,[18] Enrile specifically denied the material averments of the *Third Amended Complaint* and asserted affirmative defenses.

The CIIF Oil Mills' *Answer*[19] also contained affirmative defenses.

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[16] *Id.*, pp. 611-625.

[17] Decision dated November 28, 2007 in Civil Case No. 0033-F, *supra*, note 7, pp. 471-473.

[18] *Id.*, pp. 473-476.

[19] *Id.*, pp. 476-477.

Supreme Court E-Library

On December 20, 1999, the Sandiganbayan scheduled the pre-trial in Civil Case No. 0033-F on March 8, 2000, giving the parties sufficient time to file their Pre-Trial Briefs prior to that date. Subsequently, the parties filed their respective Pre-Trial Briefs, as follows: Cojuangco and the Cojuangco corporations, jointly on February 14, 2000; Enrile, on March 1, 2000; the CIIF Oil Mills, on March 3, 2000; and Ursua, on March 6, 2000. However, the Republic sought several extensions to file its own Pre-Trial Brief, and eventually did so on May 9, 2000.

In the meanwhile, some non-parties sought to intervene. On November 22, 1999, GABAY Foundation, Inc. (GABAY) filed its complaint-in-intervention. On February 24, 2000, the Philippine Coconut Producers Federation, Inc., Maria Clara L. Lobregat, Jose R. Eleazar, Jr., Domingo Espina, Jose Gomez, Celestino Sabate, Manuel del Rosario, Jose Martinez, Jr., and Eladio Chato (collectively referred to as COCOFED, considering that the co-intervenors were its officers) also sought to intervene, citing the October 2, 1989 ruling in G.R. No. 75713 entitled *COCOFED v. PCGG* whereby the Court recognized COCOFED as the "private national association of coconut producers certified in 1971 by the PHILCOA as having the largest membership among such producers" and as such "entrusted it with the task of maintaining continuing liaison with the different sectors of the industry, the government and its mass base." Pending resolution of its motion for intervention, COCOFED filed a Pre-Trial Brief on March 2, 2000.

On May 24, 2000, the Sandiganbayan denied GABAY's intervention without prejudice because it found "that the allowance of GABAY to enter under the special character in which it presents itself would be to open the doors to other groups of coconut farmers whether of the same kind or of any other kind which could be considered a sub-class or a sub-classification of the coconut planters or the coconut industry of this country."[20]

COCOFED's intervention as defendant was allowed on May 24, 2000, however, because "the position taken by the

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[20] *Id.*, p. 479.

Supreme Court E-Library

COCOFED is relevant to the proceedings herein, if only to state that there is a special function which the COCOFED and the coconut planters have in the matter of the coconut levy funds and the utilization of those funds, part of which is in dispute in the instant matter."[21]

The pre-trial was actually held on May 24, 2000,[22] during which the Sandiganbayan sought clarification from the parties, particularly the Republic, on their respective positions, but at the end it found the clarifications "inadequately" enlightening. Nonetheless, the Sandiganbayan, not disposed to reset, terminated the pre-trial:

> xxx primarily because the Court is given a very clear impression that the plaintiff does not know what documents will be or whether they are even available to prove the causes of action in the complaint. The Court has pursued and has exerted every form of inquiry to see if there is a way by which the plaintiff could explain in any significant particularity the acts and the evidence which will support its claim of wrong-doing by the defendants. The plaintiff has failed to do so.[23]

The following material portions of the pre-trial order[24] are quoted to provide a proper perspective of what transpired during the pre-trial, to wit:

> Upon oral inquiry from the Court, the issues which were being raised by plaintiff appear to have been made on a very generic character. Considering that any claim for violation or breach of trust or deception cannot be made on generic statements but rather by specific acts which would demonstrate fraud or breach of trust or deception, together with the evidence in support thereof, the same was not acceptable to the Court.
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> The plaintiff through its designated counsel for this morning, Atty. Dennis Taningco, has represented to this Court that the annexes to

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[21] *Id.*

[22] *Id.*, p. 480.

[23] *Id.*, p. 481.

[24] *Rollo* (G.R. No. 169203), pp. 320-323-A.

Supreme Court E-Library

its pre-trial brief, more particularly the findings of the COA in its various examinations, copies of which COA reports are attached to the pre-trial brief, would demonstrate the wrong, the act or omission attributed to the defendants or to several of them and the basis, therefore, for the relief that plaintiff seeks in its complaint. It would appear, however, that the plaintiff through its counsel at this time is not prepared to go into the specifics of the identification of these wrongs or omissions attributed to plaintiff.

The Court has reminded the plaintiff that a COA report proves itself only in proceedings where the issue arises from a review of the accountability of particular officers and, therefore, to show the existence of shortages or deficiencies in an examination conducted for that purpose, provided that such a report is accompanied by its own working papers and other supporting documents.

In civil cases such as this, a COA report would not have the same independent probative value since it is not a review of the accountability of public officers for public property in their custody as accountable officers. It has been the stated view of this Court that a COA report, to be of significant evidence, may itself stand only on the basis of the supporting documents that upon which it is based and upon an analysis made by those who are competent to do so. The Court, therefore, sought a more specific statement from plaintiff as to what these documents were and which of them would prove a particular act or omission or a series of acts or omissions purportedly committed by any, by several or by all of the defendants in any particular stage of the chain of alleged wrong-doing in this case.

The plaintiff was not in a position to do so.

The Court has remonstrated with the plaintiff, insofar as its inadequacy is concerned, primarily because this case was set for pre-trial as far back as December and has been reset from its original setting, with the undertaking by the plaintiff to prepare itself for these proceedings. It appears to this Court at this time that the failure of the plaintiff to have available responses and specific data and documents at this stage is not because the matter has been the product of oversight or notes and papers left elsewhere; rather, the agitation of this Court arises from the fact that at this very stage, the plaintiff through its counsel does not know what these documents are, where these documents will be and is still anticipating a

submission or a delivery thereof by COA at an undetermined time. The justification made by counsel for this stance is that this is only pre-trial and this information and the documents are not needed yet.

The Court is not prepared to postpone the pre-trial anew primarily because the Court is given a very clear impression that the plaintiff does not know what documents will be or whether they are even available to prove the causes of action in the complaint. The Court has pursued and has exerted every form of inquiry to see if there is a way by which the plaintiff could explain in any significant particularity the acts and the evidence which will support its claim of wrong-doing by the defendants. The plaintiff has failed to do so.

Defendants Cojuangco have come back and reiterated their previous inquiry as to the statement of the cause of action and the description thereof. While the Court acknowledges that logically, that statement along that line would be primary, the Court also recognizes that sometimes the phrasing of the issue may be determined or may arise after a statement of the evidence is determined by this Court because the Court can put itself in a position of more clearly and perhaps more accurately stating what the issues are. The Pre-Trial Order, after all, is not so much a reflection of merely separate submissions by all of the parties involved, witnesses by the Court, as to what the subject matter of litigation will be, including the determination of what matters of fact remain unresolved. At this time, the plaintiff has not taken the position on any factual statement or any piece of evidence which can be subject of admission or denial, nor any specifics of any act which could be disputed by the defendants; what plaintiff through counsel has stated are general conclusions, general statements of abuse and misuse and opportunism.

After an extended break requested by some of the parties, the sessions were resumed and nothing anew arose from the plaintiff. The plaintiff sought fifteen (15) days to file a reply to the comments and observations made by defendant Cojuangco to the pre-trial brief of the plaintiff. This Court denied this Request since the submissions in preparation for pre-trial are not litigious or contentious matters. They are mere assertions or positions which may or may not be meritorious depending upon the view of the Court of the entire case and if useful at the pre-trial. At this stage, the plaintiff then reiterated its earlier request to consider the pre-trial terminated. The Court sought the positions of the other parties, whether or not they too were prepared to submit their respective positions on the basis of what was before the Court at pre-trial. All of the parties, in the end,

Supreme Court E-Library

have come to an agreement that they were submitting their own respective positions for purpose of pre-trial on the basis of the submissions made of record.

With all of the above, the pre-trial is now deemed terminated.

This Order has been overly extended simply because there has been a need to put on record all of the events that have taken place leading to the conclusions which were drawn herein.

The parties have indicated a desire to make their submissions outside of trial as a consequence of this terminated pre-trial, with the plea that the transcript of the proceedings this morning be made available to them, so that they may have the basis for whatever assertions they will have to make either before this Court or elsewhere. The Court deems the same reasonable and the Court now gives the parties fifteen (15) days after notice to them that the transcript of stenographic notes of the proceedings herein are complete and ready for them to be retrieved. Settings for trial or for any other proceeding hereafter will be fixed by this Court either upon request of the parties or when the Court itself shall have determined that nothing else has to be done.

The Court has sought confirmation from the parties present as to the accuracy of the recapitulation herein of the proceedings this morning and the Court has gotten assent from all of the parties.

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SO ORDERED.[25]

In the meanwhile, the Sandiganbayan, in order to conform with the ruling in *Presidential Commission on Good Government v. Cojuangco, et al.*,[26] resolved COCOFED's *Omnibus Motion* (with prayer for preliminary injunction) relative to who should vote the UCPB shares under sequestration, holding as follows:[27]

In the light of all of the above, the Court submits itself to jurisprudence and with the statements of the Supreme Court in G.R.

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[25] *Id.*

[26] G.R. No. 133197, January 27, 1999, 302 SCRA 217.

[27] Decision dated November 28, 2007 in Civil Case No. 0033-F, *supra*, note 7, pp. 483-484.

Supreme Court E-Library

No. 115352 entitled *Enrique Cojuangco, Jr., et al. vs. Jaime Calpo, et al.* dated January 27, 1997, as well as the resolution of the Supreme Court promulgated on January 27, 1999 in the case of *PCGG vs. Eduardo Cojuangco, Jr., et al.*, G.R. No. 13319 which included the Sandiganbayan as one of the respondents. In these two cases, the Supreme Court ruled that the voting of sequestered shares of stock is governed by two considerations, namely:

1. whether there is *prima facie* evidence showing that the said shares are ill-gotten and thus belong to the State; and

2. whether there is an imminent danger of dissipation thus necessitating their continued sequestration and voting by the PCGG while the main issue pends with the Sandiganbayan.

x x x x x x x x x.

In view hereof, the movants COCOFED, *et al*. and Ballares, *et al*. as well as Eduardo Cojuangco, *et al*. who were acknowledged to be registered stockholders of the UCPB are authorized, as are all other registered stockholders of the United Coconut Planters Bank, until further orders from this Court, to exercise their rights to vote their shares of stock and themselves to be voted upon in the United Coconut Planters Bank (UCPB) at the scheduled Stockholders' Meeting on March 6, 2001 or on any subsequent continuation or resetting thereof, and to perform such acts as will normally follow in the exercise of these rights as registered stockholders.

x x x x x x x x x.

Consequently, on March 1, 2001, the Sandiganbayan issued a writ of preliminary injunction to enjoin the PCGG from voting the sequestered shares of stock of the UCPB.

On July 25, 2002, before Civil Case No. 0033-F could be set for trial, the Republic filed a *Motion for Judgment on the Pleadings and/or for Partial Summary Judgment (Re: Defendants CIIF Companies, 14 Holding Companies and COCOFED, et al.).*[28]

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[28] *Id.*, p. 484.

Supreme Court E-Library

Cojuangco, Enrile, and COCOFED separately opposed the motion. Ursua adopted COCOFED's opposition.

Thereafter, the Republic likewise filed a *Motion for Partial Summary Judgment [Re: Shares in San Miguel Corporation Registered in the Respective Names of Defendant Eduardo M. Cojuangco, Jr. and the Defendant Cojuangco Companies]*.[29]

Cojuangco, *et al.* opposed the motion,[30] after which the Republic submitted its reply.[31]

On February 23, 2004, the Sandiganbayan issued an order,[32] in which it enumerated the admitted facts or facts that appeared to be without substantial controversy in relation to the Republic's *Motion for Judgment on the Pleadings and/or for Partial Summary Judgment [Re: Defendants CIIF Companies, 14 Holding Companies and COCOFED, et al.]*.

Commenting on the order of February 23, 2004, Cojuangco, *et al.* specified the items they considered as inaccurate, but particularly interposed no objection to item no. 17 (to the extent that item no. 17 stated that Cojuangco had disclaimed any interest in the CIIF block SMC shares of stock registered in the names of the 14 corporations listed in item no. 1 of the order).[33]

The Republic also filed its *Comment*,[34] but COCOFED denied the admitted facts summarized in the order of February 23, 2004.[35]

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[29] *Rollo* (G.R. No. 180702), Vol. 2, pp. 642-684.

[30] *Id.*, pp. 685-738.

[31] *Id.*, pp. 738A-807.

[32] Decision dated November 28, 2007 in Civil Case No. 0033-F, *supra*, note 7, p. 485.

[33] *Id.*, p. 485.

[34] *Id.*

[35] *Id.*

Supreme Court E-Library

Earlier, on October 8, 2003,[36] the Sandiganbayan resolved the various pending motions and pleadings relative to the writs of sequestration issued against the defendants, disposing:

IN VIEW OF THE FOREGOING, the Writs of Sequestration Nos. (a) 86-0042 issued on April 8, 1986, (b) 86-0062 issued on April 21, 1986, (c) 86-0069 issued on April 22, 1986, (d) 86-0085 issued on May 9, 1986, (e) 86-0095 issued on May 16, 1986, (f) 86-0096 dated May 16, 1986, (g) 86-0097 issued on May 16, 1986, (h) 86-0098 issued on May 16, 1986 and (i) 87-0218 issued on May 27, 1987 are hereby declared automatically lifted for being null and void.

Despite the lifting of the writs of sequestration, since the Republic continues to hold a claim on the shares which is yet to be resolved, it is hereby ordered that the following shall be annotated in the relevant corporate books of San Miguel Corporation:

(1) any sale, pledge, mortgage or other disposition of any of the shares of the Defendants Eduardo Cojuangco, *et al*. shall be subject to the outcome of this case;

(2) the Republic through the PCGG shall be given twenty (20) days written notice by Defendants Eduardo Cojuangco, *et al*. prior to any sale, pledge, mortgage or other disposition of the shares;

(3) in the event of sale, mortgage or other disposition of the shares, by the Defendants Cojuangco, *et al*., the consideration therefore, whether in cash or in kind, shall be placed in escrow with Land Bank of the Philippines, subject to disposition only upon further orders of this Court; and

(4) any cash dividends that are declared on the shares shall be placed in escrow with the Land Bank of the Philippines,

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[36] *Rollo* (G.R. No. 169203), pp. 40-55; the resolution, although dated September 17, 2003, was promulgated only on October 8, 2003; it was penned by Associate Justice Diosdado M. Peralta (later Presiding Justice, now a Member of the Court), and concurred in by Associate Justice Teresita J. Leonardo-De Castro (later Presiding Justice, now a Member of the Court) who wrote a concurring and dissenting opinion, Associate Justice Gregory S. Ong, Associate Justice Godofredo Legaspi (retired), and Associate Justice Francisco H. Villaruz, Jr., who submitted a separate concurring opinion.

Supreme Court E-Library

> subject to disposition only upon further orders of this Court. If in case stock dividends are declared, the conditions on the sale, pledge, mortgage and other disposition of any of the shares as above-mentioned in conditions 1, 2 and 3, shall likewise apply.

In so far as the matters raised by Defendants Eduardo Cojuangco, *et al*. in their "Omnibus Motion" dated September 23, 1996 and "Reply to PCGG's Comment/Opposition with Motion to Order PCGG to Complete Inventory, to Nullify Writs of Sequestration and to Enjoin PCGG from Voting Sequestered Shares of Stock" dated January 3, 1997, considering the above conclusion, this Court rules that it is no longer necessary to delve into the matters raised in the said Motions.

SO ORDERED.[37]

Cojuangco, *et al.* moved for the modification of the resolution,[38] praying for the deletion of the conditions for allegedly restricting their rights. The Republic also sought reconsideration of the resolution.[39]

Eventually, on June 24, 2005, the Sandiganbayan denied both motions, but reduced the restrictions thuswise:

WHEREFORE, the "Motion for Reconsideration (Re: Resolution dated September 17, 2003 Promulgated on October 8, 2003)" dated October 24, 2003 of Plaintiff Republic is hereby DENIED for lack of merit. As to the "Motion for Modification (Re: Resolution Promulgated on October 8, 2003)" dated October 22, 2003, the same is hereby DENIED for lack of merit. However, the restrictions imposed by this Court in its Resolution dated September 17, 2003 and promulgated on October 8, 2003 shall now read as follows:

> "Despite the lifting of the writs of sequestration, since the Republic continues to hold a claim on the shares which is yet to be resolved, it is hereby ordered that the following shall be

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[37] Resolution dated October 8, 2003 in Civil Case No. 0033-F, *supra*, note 5, pp. 53-55.

[38] Decision dated November 28, 2007 in Civil Case No. 0033-F, *supra*, note 7, p. 486.

[39] *Id*.

Supreme Court E-Library

annotated in the relevant corporate books of San Miguel Corporation:

"a) any sale, pledge, mortgage or other disposition of any of the shares of the Defendants Eduardo Cojuangco, *et al*. shall be subject to the outcome of this case.

"b) the Republic through the PCGG shall be given twenty (20) days written notice by Defendants Eduardo Cojuangco, *et al*. prior to any sale, pledge, mortgage or other disposition of the shares.

"SO ORDERED."[40]

Pending resolution of the motions relative to the lifting of the writs of sequestration, SMC filed a *Motion for Intervention* with attached *Complaint-in-Intervention*,[41] alleging, among other things, that it had an interest in the matter in dispute between the Republic and defendants CIIF Companies for being the owner by purchase of a portion (*i.e.*, 25,450,000 SMC shares covered by Stock Certificate Nos. A0004129 and B0015556 of the so-called "CIIF block of SMC shares of stock" sought to be recovered as alleged ill-gotten wealth).

Although Cojuangco, *et al.* interposed no objection to SMC's intervention, the Republic opposed,[42] averring that the intervention would be improper and was a mere attempt to litigate anew issues already raised and passed upon by the Supreme Court. COCOFED similarly opposed SMC's intervention,[43] and Ursua adopted its opposition.

On May 6, 2004, the Sandiganbayan denied SMC's motion to intervene.[44] SMC sought reconsideration,[45] and its motion to that effect was opposed by COCOFED and the Republic.

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[40] Resolution dated June 24, 2005, *supra*, note 6, p. 81.

[41] Decision dated November 28, 2007 in Civil Case No. 0033-F, *supra*, note 7, p. 487.

[42] *Id*.

[43] *Id*.

[44] *Id*.

[45] *Id.*, p. 488.

Supreme Court E-Library

On May 7, 2004, the Sandiganbayan granted the Republic's *Motion for Judgment on the Pleadings and/or Partial Summary Judgment (Re: Defendants CIIF Companies, 14 Holding Companies and COCOFED, et al.)* and rendered a *Partial Summary Judgment*,[46] the dispositive portion of which reads 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.

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

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[46] *Rollo* (G.R. No. 169203), pp. 655-718.

Supreme Court E-Library

ARISING FROM, BUT NOT LIMITED TO, EXERCISE OF PRE-EMPTIVE RIGHTS ARE DECLARED OWNED BY THE GOVERNMENT IN-TRUST FOR ALL THE COCONUT FARMERS AND ORDERED RECONVEYED TO THE GOVERNMENT.

Let the trial of this Civil Case proceed with respect to the issues which have not been disposed of in this partial Summary Judgment, including the determination of whether the CIIF Block of SMC Shares adjudged to be owned by the Government represents 27% of the issued and outstanding capital stock of SMC according to plaintiff or 31.3% of said capital stock according to COCOFED, *et al*. and Ballares, *et al*.

SO ORDERED.[47]

In the same resolution of May 7, 2004, the Sandiganbayan considered the *Motions to Dismiss* filed by Cojuangco, *et al*. on August 2, 2000 and by Enrile on September 4, 2000 as overtaken by the Republic's *Motion for Judgment on the Pleadings and/or Partial Summary Judgment*.[48]

On May 25, 2004, Cojuangco, *et al*. filed their *Motion for Reconsideration*.[49]

COCOFED filed its so-called *Class Action Omnibus Motion: (a) Motion to Dismiss for Lack of Subject Matter Jurisdiction and Alternatively, (b) Motion for Reconsideration* dated May 26, 2004.[50]

The Republic submitted its *Consolidated Comment*.[51]

Relative to the resolution of May 7, 2004, the Sandiganbayan issued its resolution of December 10, 2004,[52] denying the

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[47] *Id.,* pp. 717-718.

[48] Decision dated November 28, 2007 in Civil Case No. 0033-F, *supra*, note 7, p. 489.

[49] *Id*.

[50] *Id*.

[51] *Id*.

[52] Resolution dated December 10, 2004 in Civil Case No. 0033-F, *supra*, note 4, pp. 61-63; it was penned by Associate Justice Leonardo-De Castro,

Supreme Court E-Library

Republic's *Motion for Partial Summary Judgment (Re: Shares in San Miguel Corporation Registered in the Respective Names of Defendants Eduardo M. Cojuangco, Jr. and the defendant Cojuangco Companies)* upon the following reasons:

In the instant case, a circumspect review of the records show that while there are facts which appear to be undisputed, there are also genuine factual issues raised by the defendants which need to be threshed out in a full-blown trial. Foremost among these issues are the following:

1) What are the "various sources" of funds, which the defendant Cojuangco and his companies claim they utilized to acquire the disputed SMC shares?

2) Whether or not such funds acquired from alleged "various sources" can be considered coconut levy funds;

3) Whether or not defendant Cojuangco had indeed served in the governing bodies of PC, UCPB and/or CIIF Oil Mills at the time the funds used to purchase the SMC shares were obtained such that he owed a fiduciary duty to render an account to these entities as well as to the coconut farmers;

4) Whether or not defendant Cojuangco took advantage of his position and/or close ties with then President Marcos to obtain favorable concessions or exemptions from the usual financial requirements from the lending banks and/or coco-levy funded companies, in order to raise the funds to acquire the disputed SMC shares; and if so, what are these favorable concessions or exemptions?

Answers to these issues are not evident from the submissions of the plaintiff and must therefore be proven through the presentation of relevant and competent evidence during trial. A perusal of the subject Motion shows that the plaintiff hastily derived conclusions from the defendants' statements in their previous pleadings although such conclusions were not supported by categorical facts but only mere inferences. In the Reply dated

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and concurred in by Associate Justice Peralta and Associate Justice Roland B. Jurado; bold emphasis supplied.

Supreme Court E-Library

October 2, 2003, the plaintiff construed the supposed meaning of the phrase "*various sources*" (referring to the source of defendant Cojuangco's funds which were used to acquire the subject SMC shares), which plaintiff said was quite obvious from the defendants' admission in his Pre-Trial Brief, which we quote:

> "According to Cojuangco's own Pre-Trial Brief, these so-called 'various sources,' *i.e.*, the sources from which he obtained the funds he claimed to have used in buying the 20% SMC shares are not in fact 'various' as he claims them to be. He says he obtained 'loans' from UCPB and 'advances' from the CIIF Oil Mills. He even goes as far as to admit that his *only* evidence in this case would have been 'records of UCPB' and a 'representative of the CIIF Oil Mills' obviously the 'records of UCPB' relate to the 'loans' that Cojuangco claims to have obtained from UCPB — of which he was President and CEO — while the 'representative of the CIIF Oil Mills' will obviously testify on the 'advances' Cojuangco obtained from CIIF Oil Mills — of which he was also the President and CEO."

From the foregoing premises, plaintiff went on to conclude that:

> "These admissions of defendant Cojuangco are outright admissions that he (1) took money from the bank entrusted by law with the administration of coconut levy funds and (2) took more money from the very corporations/oil mills in which part of those coconut levy funds (the CIIF) was placed — treating the funds of UCPB and the CIIF as his own personal capital to buy 'his' SMC shares."

We cannot agree with the plaintiff's contention that the defendant's statements in his Pre-Trial Brief regarding the presentation of a possible CIIF witness as well as UCPB records, can already be considered as admissions of the defendant's exclusive use and misuse of coconut levy funds to acquire the subject SMC shares and defendant Cojuangco's alleged taking advantage of his positions to acquire the subject SMC shares. Moreover, in ruling on a motion for summary judgment, the court "should take that view of the evidence most favorable to the party against whom it is directed, giving such party the benefit of all inferences." Inasmuch as this issue cannot be resolved merely from an interpretation of the defendant's

Supreme Court E-Library

statements in his brief, the UCPB records must be produced and the CIIF witness must be heard to ensure that the conclusions that will be derived have factual basis and are thus, valid.

WHEREFORE, in view of the forgoing, the Motion for Partial Summary Judgment dated July 11, 2003 is hereby DENIED for lack of merit.

SO ORDERED.

Thereafter, on December 28, 2004, the Sandiganbayan resolved the other pending motions,[53] *viz*:

WHEREFORE**,** in view of the foregoing, the Motion for Reconsideration dated May 25, 2004 filed by defendant Eduardo M. Cojuangco, Jr., *et al*. and the Class Action Omnibus Motion: (a) Motion to Dismiss for Lack of Subject Matter Jurisdiction and Alternatively, (b) Motion for Reconsideration dated May 26, 2004 filed by COCOFED, *et al*. and Ballares, *et al*. are hereby DENIED for lack of merit.

SO ORDERED.[54]

COCOFED moved to set the case for trial,[55] but the Republic opposed the motion.[56] On their part, Cojuangco, *et al.* also moved to set the trial,[57] with the Republic similarly opposing the motion.[58]

On March 23, 2006, the Sandiganbayan granted the motions to set for trial and set the trial on August 8, 10, and 11, 2006.[59]

In the meanwhile, on August 9, 2005, the Republic filed a *Motion for Execution of Partial Summary Judgment (re: CIIF*

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[53] Decision dated November 28, 2007 in Civil Case No. 0033-F, *supra*, note 7, p. 490.

[54] *Id*.

[55] *Id*.

[56] *Id*.

[57] *Id*.

[58] *Id.*, p. 491.

[59] *Id*.

Supreme Court E-Library

block of SMC Shares of Stock),[60] contending that an execution pending appeal was justified because any appeal by the defendants of the Partial Summary Judgment would be merely dilatory.

Cojuangco, *et al.* opposed the motion.[61]

The Sandiganbayan denied the Republic's *Motion for Execution of Partial Summary Judgment (re: CIIF block of SMC Shares of Stock*),[62] to wit:

> 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 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.;

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[60] *Id.*, p. 492.

[61] *Id*.

[62] *Id*.

Supreme Court E-Library

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.

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 IN TRUST FOR ALL THE COCONUT FARMERS AND ORDERED RECONVEYED TO THE GOVERNMENT.

The aforementioned Partial Summary Judgment is now deemed a separate appealable judgment which finally disposes of the ownership of the CIIF Block of SMC Shares, without prejudice to the continuation of proceedings with respect to the remaining claims particularly those pertaining to the Cojuangco, *et al*. block of SMC shares.

SO ORDERED.[63]

During the pendency of the Republic's motion for execution, Cojuangco, *et al*. filed a *Motion for Authority to Sell San Miguel Corporation (SMC) shares*, praying for leave to allow the sale of SMC shares to proceed, exempted from the conditions set forth in the resolutions promulgated on October 3, 2003 and June 24, 2005.[64] The Republic opposed, contending that the requested leave to sell would be tantamount to removing jurisdiction over the *res* or the subject of litigation.[65]

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[63] *Id.,* pp. 492-493.

[64] *Id.,* pp. 493-494.

[65] *Id.,* p. 494.

Supreme Court E-Library

However, the Sandiganbayan eventually granted the *Motion for Authority to Sell San Miguel Corporation (SMC) shares*.[66]

Thereafter, Cojuangco, *et al.* manifested to the Sandiganbayan that the shares would be sold to the San Miguel Corporation Retirement Plan.[67] Ruling on the manifestations of Cojuangco, *et al.*, the Sandiganbayan issued its resolution of July 30, 2007 allowing the sale of the shares, to wit:

> This notwithstanding however, while the Court exempts the sale from the express condition that it shall be subject to the outcome of the case, defendants Cojuangco, *et al*. may well be reminded that despite the deletion of the said condition, they cannot transfer to any buyer any interest higher than what they have. No one can transfer a right to another greater than what he himself has. Hence, in the event that the Republic prevails in the instant case, defendants Cojuangco, *et al*. hold themselves liable to their transferees-buyers, especially if they are buyers in good faith and for value. In such eventuality, defendants Cojuangco, *et al*. cannot be shielded by the cloak of principle of *caveat emptor* because case law has it that this rule only requires the purchaser to exercise such care and attention as is usually exercised by ordinarily prudent men in like business affairs, and only applies to defects which are open and patent to the service of one exercising such care.
>
> Moreover, said defendants Eduardo M. Cojuangco, *et al*. are hereby ordered to render their report on the sale within ten (10) days from completion of the payment by the San Miguel Corporation Retirement Plan.
>
> SO ORDERED.[68]

Cojuangco, *et al.* later rendered a complete accounting of the proceeds from the sale of the Cojuangco block of shares of SMC stock, informing that a total amount of ₱4,786,107,428.34 had been paid to the UCPB as loan repayment.[69]

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[66] *Id.*

[67] *Id.*

[68] *Id.*, pp. 494-495.

[69] *Id.*, p. 495.

Supreme Court E-Library

It appears that the trial concerning the disputed block of shares was not scheduled because the consideration and resolution of the aforecited motions for summary judgment occupied much of the ensuing proceedings.

At the hearing of August 8, 2006, the Republic manifested[70] that it did not intend to present any testimonial evidence and asked for the marking of certain exhibits that it would have the Sandiganbayan take judicial notice of. The Republic was then allowed to mark certain documents as its Exhibits A to I, inclusive, following which it sought and was granted time within which to formally offer the exhibits.

On August 31, 2006, the Republic filed its *Manifestation of Purposes (Re: Matters Requested or Judicial Notice on the 20% Shares in San Miguel Corporation Registered in the Respective Names of defendant Eduardo M. Cojuangco, Jr. and the defendant Cojuangco Companies)*.[71]

On September 18, 2006, the Sandiganbayan issued the following resolution,[72] to wit:

> Acting on the Manifestation of Purposes (Re: Matters Requested or Judicial Notice on the 20% Shares in San Miguel Corporation Registered in the Respective names of Defendant Eduardo M. Cojuangco, Jr. and the Defendant Cojuangco Companies) dated 28 August 2006 filed by the plaintiff, which has been considered its formal offer of evidence, and the Comment of Defendants Eduardo M. Cojuangco, Jr., *et al*. on Plaintiff's "Manifestation of Purposes …" Dated August 30, 2006 dated September 15, 2006, the court resolves to ADMIT all the exhibits offered, *i.e.*:
>
> - Exhibit "A" – the Answer of defendant Eduardo M. Cojuangco, Jr. to the Third Amended Complaint (Subdivided) dated June 23, 1999, as well as the sub-markings (Exhibit "A-1" to "A-4";
> - Exhibit "B" – the "Pre-Trial Brief dated January 11, 2000 of defendant CIIF Oil Mills and fourteen (14) CIIF Holding

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[70] *Id*.

[71] *Id*.

[72] *Rollo* (G.R. No. 180702), Vol. 3, pp. 882-884.

Supreme Court E-Library

Companies, as well as the sub-markings Exhibits "B-1" and "B-2"

- Exhibit "C" – the Pre-Trial Brief dated January 11, 2000 of defendant Eduardo M. Cojuangco, Jr. as well as the sub-markings Exhibits "C-1", "C-1-a" and "C-1-b";
- Exhibit "D" – the Plaintiff's Motion for Summary Judgment [Re: Shares in San Miguel Corporation Registered in the Respective Names of Defendant Eduardo M. Cojuangco, Jr. and the Defendant Cojuangco Companies] dated July 11, 2003, as well as the sub-markings Exhibits "D-1" to "D-4"

the said exhibits being part of the record of the case, as well as

- Exhibit "E" – Presidential Decree No. 961 dated July 11, 1976;
- Exhibit "F" – Presidential Decree No. 755 dated July 29, 1975;
- Exhibit "G" – Presidential Decree No. 1468 dated June 11, 1978;
- Exhibit "H" – Decision of the Supreme Court in *Republic vs. COCOFED, et al.*, G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462

the aforementioned exhibits being matters of public record.

The admission of these exhibits is being made over the objection of the defendants Cojuangco, *et al*. as to the relevance thereof and as to the purposes for which they were offered in evidence, which matters shall be taken into consideration by the Court in deciding the case on the merits.

The trial hereon shall proceed on November 21, 2006, at 8:30 in the morning as previously scheduled.[73]

During the hearing on November 24, 2006, Cojuangco, *et al*. filed their *Submission and Offer of Evidence of Defendants*,[74] formally offering in evidence certain documents to substantiate their counterclaims, and informing that they found no need to present countervailing evidence because the Republic's evidence did not prove the allegations of the *Complaint*. On December 5,

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[73] *Id*.

[74] Decision dated November 28, 2007 in Civil Case No. 0033-F, *supra*, note 7, p. 496.

Supreme Court E-Library

2006, after the Republic submitted its *Comment*,[75] the Sandiganbayan admitted the exhibits offered by Cojuangco, *et al.*, and granted the parties a non-extendible period within which to file their respective memoranda and reply-memoranda.

Thereafter, on February 23, 2007, the Sandiganbayan considered the case submitted for decision.[76]

ISSUES

The various issues submitted for consideration by the Court are summarized hereunder.

G.R. No. 166859

The Republic came to the Court *via* petition for *certiorari*[77] to assail the denial of its *Motion for Partial Summary Judgment* through the resolution promulgated on December 10, 2004, insisting that the Sandiganbayan thereby committed grave abuse of discretion: (*a*) in holding that the various sources of funds used in acquiring the SMC shares of stock remained disputed; (*b*) in holding that it was disputed whether or not Cojuangco had served in the governing bodies of PCA, UCPB, and/or the CIIF Oil Mills; and (*c*) in not finding that Cojuangco had taken advantage of his position and had violated his fiduciary obligations in acquiring the SMC shares of stock in issue.

The Court will consider and resolve the issues thereby raised alongside the issues presented in G.R. No. 180702.

G.R. No. 169203

In the resolution promulgated on October 8, 2003, the Sandiganbayan declared as "automatically lifted for being null and void" nine writs of sequestration (WOS) issued against properties of Cojuangco and Cojuangco companies, considering that: (*a*) eight of them (*i.e.*, WOS No. 86-0062 dated April 21,

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[75] *Id.*

[76] *Id.*, p. 497.

[77] *Rollo* (G.R. No. 166859), pp. 2-48.

Supreme Court E-Library

1986; WOS No. 86-0069 dated April 22, 1986; WOS No. 86-0085 dated May 9, 1986; WOS No. 86-0095 dated May 16, 1986; WOS No. 86-0096 dated May 16, 1986; WOS No. 86-0097 dated May 16, 1986; WOS No. 86-0098 dated May 16, 1986; and WOS No. 87-0218 dated May 27, 1987) had been issued by only one PCGG Commissioner, contrary to the requirement of Section 3 of the Rules of the PCGG for at least two Commissioners to issue the WOS; and (*b*) the ninth (*i.e.*, WOS No. 86-0042 dated April 8, 1986), although issued prior to the promulgation of the Rules of the PCGG requiring at least two Commissioners to issue the WOS, was void for being issued *without prior determination* by the PCGG of a *prima facie* basis for sequestration.

Nonetheless, despite its lifting of the nine WOS, the Sandiganbayan prescribed four conditions to be still "annotated in the relevant corporate books of San Miguel Corporation" considering that the Republic "continues to hold a claim on the shares which is yet to be resolved."[78]

In its resolution promulgated on June 24, 2005, the Sandiganbayan denied the Republic's *Motion for Reconsideration*

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[78] The four conditions were the following:

(1) any sale, pledge, mortgage or other disposition of any of the shares of the Defendants Eduardo Cojuangco, *et al*. shall be subject to the outcome of this case;

(2) the Republic through the PCGG shall be given twenty (20) days written notice by Defendants Eduardo Cojuangco, *et al*. prior to any sale, pledge, mortgage or other disposition of the shares;

(3) in the event of sale, mortgage or other disposition of the shares, by the Defendants Cojuangco, *et al*., the consideration therefore, whether in cash or in kind, shall be placed in escrow with Land Bank of the Philippines, subject to disposition only upon further orders of this Court; and

(4) any cash dividends that are declared on the shares shall be placed in escrow with the Land Bank of the Philippines, subject to disposition only upon further orders of this Court. If in case stock dividends are declared, the conditions on the sale, pledge, mortgage and other disposition of any of the shares as above-mentioned in conditions 1, 2 and 3, shall likewise apply.

Supreme Court E-Library

filed *vis-a-vis* the resolution promulgated on October 8, 2003, but reduced the conditions earlier imposed to only two.[79]

On September 1, 2005, the Republic filed a petition for *certiorari*[80] to annul the resolutions promulgated on October 8, 2003 and on June 24, 2005 on the ground that the Sandiganbayan had thereby committed grave abuse of discretion:

I.

XXX IN LIFTING WRIT OF SEQUESTRATION NOS. 86-0042 AND 87-0218 DESPITE EXISTENCE OF THE BASIC REQUISITES FOR THE VALIDITY OF SEQUESTRATION.

II.

XXX WHEN IT DENIED PETITIONER'S ALTERNATIVE PRAYER IN ITS MOTION FOR RECONSIDERATION FOR THE ISSUANCE OF AN ORDER OF SEQUESTRATION AGAINST ALL THE SUBJECT SHARES OF STOCK IN ACCORDNCE WITH THE RULING IN *REPUBLIC VS. SANDIGANBAYAN*, 258 SCRA 685 (1996).

III.

XXX IN SUBSEQUENTLY DELETING THE LAST TWO (2) CONDITIONS WHICH IT EARLIER IMPOSED ON THE SUBJECT SHARES OF STOCK.[81]

G.R. No. 180702

On November 28, 2007, the Sandiganbayan promulgated its decision,[82] decreeing as follows:

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[79] The modified conditions were reduced to only two, namely:

(a) any sale, pledge, mortgage or other disposition of any of the shares of the Defendants Eduardo Cojuangco, *et al*. shall be subject to the outcome of this case.

(b) the Republic through the PCGG shall be given twenty (20) days written notice by Defendants Eduardo Cojuangco, *et al*. prior to any sale, pledge, mortgage or other disposition of the shares.

[80] *Rollo* (G.R. No. 169203), pp. 2-39.

[81] *Id.,* p. 11.

[82] Decision dated November 28, 2007 in Civil Case No. 0033-F, *supra*, note 7; it was penned by Associate Justice Peralta, with the concurrence of

Supreme Court E-Library

WHEREFORE, in view of all the foregoing, the Court is constrained to DISMISS, as it hereby DISMISSES, the Third Amended Complaint in subdivided Civil Case No. 0033-F for failure of plaintiff to prove by preponderance of evidence its causes of action against defendants with respect to the twenty percent (20%) outstanding shares of stock of San Miguel Corporation registered in defendants' names, denominated herein as the "Cojuangco, *et al*. block" of SMC shares. For lack of satisfactory warrant, the counterclaims in defendants' Answers are likewise ordered dismissed.

SO ORDERED.

Hence, the Republic appeals, positing:

I.

COCONUT LEVY FUNDS ARE PUBLIC FUNDS. THE SMC SHARES, WHICH WERE ACQUIRED BY RESPONDENTS COJUANGCO, JR. AND THE COJUANGCO COMPANIES WITH THE USE OF COCONUT LEVY FUNDS — IN VIOLATION OF RESPONDENT COJUANGCO, JR.'S FIDUCIARY OBLIGATION — ARE, NECESSARILY, PUBLIC IN CHARACTER AND SHOULD BE RECONVEYED TO THE GOVERNMENT.

II.

PETITIONER HAS CLEARLY DEMONSTRATED ITS ENTITLEMENT, AS A MATTER OF LAW, TO THE RELIEFS PRAYED FOR.[83]

and urging the following issues to be resolved, to wit:

I.

WHETHER THE HONORABLE SANDIGANBAYAN COMMITTED A REVERSIBLE ERROR WHEN IT DISMISSED CIVIL CASE NO. 0033-F; AND

Presiding Justice Leonardo-De Castro and Associate Justice Efren N. De la Cruz.

[83] Petition, p. 26; *supra*, note 3, p. 421.

Supreme Court E-Library

II.

WHETHER OR NOT THE SUBJECT SHARES IN SMC, WHICH WERE ACQUIRED BY, AND ARE IN THE RESPECTIVE NAMES OF RESPONDENTS COJUANGCO, JR. AND THE COJUANGCO COMPANIES, SHOULD BE RECONVEYED TO THE REPUBLIC OF THE PHILIPPINES FOR HAVING BEEN ACQUIRED USING COCONUT LEVY FUNDS.[84]

On their part, the petitioners-in-intervention[85] submit the following issues, to wit:

I

WHETHER OR NOT THE COURT *A QUO* GRAVELY ERRED AND DECIDED THE CASE *A QUO* IN VIOLATION OF LAW AND APPLICABLE RULINGS OF THE HONORABLE COURT IN RULING THAT, WHILE ADMITTEDLY THE SUBJECT SMC SHARES WERE PURCHASED FROM LOAN PROCEEDS FROM UCPB AND ADVANCES FROM THE CIIF OIL MILLS, SAID SUBJECT SMC SHARES ARE NOT PUBLIC PROPERTY

II

WHETHER OR NOT THE COURT *A QUO* GRAVELY ERRED AND DECIDED THE CASE *A QUO* IN VIOLATION OF LAW AND APPLICABLE RULINGS OF THE HONORABLE COURT IN FAILING TO RULE THAT, EVEN ASSUMING FOR THE SAKE OF ARGUMENT THAT LOAN PROCEEDS FROM UCPB ARE NOT PUBLIC FINDS (sic), STILL, SINCE RESPONDENT COJUANGCO, IN THE PURCHASE OF THE SUBJECT SMC SHARES FROM SUCH LOAN PROCEEDS, VIOLATED HIS FIDUCIARY DUTIES AND TOOK A COMMERCIAL OPPORTUNITY THAT RIGHTFULLY BELONGED TO UCPB (A PUBLIC CORPORATION), THE SUBJECT SMC SHARES SHOULD REVERT BACK TO THE GOVERNMENT.

RULING

We deny all the petitions of the Republic.

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[84] *Id.*, pp. 420-421.

[85] *Rollo*, (G.R. No. 180702), Volume 1, pp. 18-77.

Supreme Court E-Library

I
Lifting of nine WOS for violation of PCGG Rules did not constitute grave abuse of discretion

Through its resolution promulgated on June 24, 2005, assailed on *certiorari* in G.R. No. 169203, the Sandiganbayan lifted the nine WOS for the following reasons, to wit:

> Having studied the antecedent facts, this Court shall now resolve the pending incidents especially defendants' "Motion to Affirm that the Writs or Orders of Sequestration Issued on Defendants' Properties Were Unauthorized, Invalid and Never Became Effective" dated March 5, 1999.
>
> Section 3 of the PCGG Rules and Regulations promulgated on April 11, 1986, provides:
>
> > "Sec. 3. Who may issue. — A writ of sequestration or a freeze or hold order may be issued by the Commission upon the *authority of at least two Commissioners*, based on the affirmation or complaint of an interested party or *motu propio* (sic) the issuance thereof is warranted."
>
> In this present case, of all the questioned writs of sequestration issued after the effectivity of the PCGG Rules and Regulations or after April 11, 1986, only writ no. 87-0218 issued on May 27, 1987 complied with the requirement that it be issued by at least two Commissioners, the same having been issued by Commissioners Ramon E. Rodrigo and Quintin S. Doromal. However, even if Writ of Sequestration No. 87-0218 complied with the requirement that the same be issued by at least two Commissioners, the records fail to show that it was issued with factual basis or with factual foundation as can be seen from the Certification of the Commission Secretary of the PCGG of the excerpt of the minutes of the meeting of the PCGG held on May 26, 1987, stating therein that:
>
> > "The Commission approved the recommendation of Dir. Cruz to sequester all the shares of stock, assets, records, and documents of Balete Ranch, Inc. and the appointment of the Fiscal Committee with ECI Challenge, Inc./Pepsi-Cola for Balete Ranch, Inc. and the Aquacor Marketing Corp. vice Atty. S. Occena. The objective is to consolidate the Fiscal Committee activities covering three associated entities of Mr. Eduardo

Supreme Court E-Library

> Cojuangco.Upon recommendation of Comm. Rodrigo, the reconstitution of the Board of Directors of the three companies was deferred for further study."

Nothing in the above-quoted certificate shows that there was a prior determination of a factual basis or factual foundation. It is the absence of a *prima facie* basis for the issuance of a writ of sequestration and not the lack of authority of two (2) Commissioners which renders the said writ void *ab initio*. Thus, being the case, Writ of Sequestration No. 87-0218 must be automatically lifted.

As declared by the Honorable Supreme Court in two cases it has decided,

> "The absence of a prior determination by the PCGG of a *prima facie* basis for the sequestration order is, unavoidably, a fatal defect which rendered the sequestration of respondent corporation and its properties void *ab initio*." And
>
> "The corporation or entity against which such writ is directed will not be able to visually determine its validity, unless the required signatures of at least two commissioners authorizing its issuance appear on the very document itself. The issuance of sequestration orders requires the existence of a *prima facie* case. The two — commissioner rule is obviously intended to assure a collegial determination of such fact. In this light, a writ bearing only one signature is an obvious transgression of the PCGG Rules."

Consequently, the writs of sequestration nos. 86-0062, 86-0069, 86-0085, 86-0095, 86-0096, 86-0097 and 86-0098 must be lifted for not having complied with the pertinent provisions of the PCGG Rules and Regulations, all of which were issued by only one Commissioner and after April 11, 1986 when the PCGG Rules and Regulations took effect, an utter disregard of the PCGG's Rules and Regulations. The Honorable Supreme Court has stated that:

> "Obviously, Section 3 of the PCGG Rules was intended to protect the public from improvident, reckless and needless sequestrations of private property. And since these Rules were issued by Respondent Commission, it should be the first entity to observe them."

Anent the writ of sequestration no. 86-0042 which was issued on April 8, 1986 or prior to the promulgation of the PCGG Rules and

Supreme Court E-Library

Regulations on April 11, 1986, the same cannot be declared void on the ground that it was signed by only one Commissioner because at the time it was issued, the Rules and Regulations of the PCGG were not yet in effect. However, it again appears that there was no prior determination of the existence of a *prima facie* basis or factual foundation for the issuance of the said writ. The PCGG, despite sufficient time afforded by this Court to show that a *prima facie* basis existed prior to the issuance of Writ No. 86-0042, failed to do so. Nothing in the records submitted by the PCGG in compliance of the Resolutions and Order of this Court would reveal that a meeting was held by the Commission for the purpose of determining the existence of a *prima facie* evidence prior to its issuance. In a case decided by the Honorable Supreme Court, wherein it involved a writ of sequestration issued by the PCGG on March 19, 1986 against all assets, movable and immovable, of Provident International Resources Corporation and Philippine Casino Operators Corporation, the Honorable Supreme Court enunciated:

> "The questioned sequestration order was, however issued on March 19, 1986, prior to the promulgation of the PCGG Rules and Regulations. As a consequence, we cannot reasonably expect the commission to abide by said rules, which were nonexistent at the time the subject writ was issued by then Commissioner Mary Concepcion Bautista. Basic is the rule that no statute, decree, ordinance, rule or regulation (and even policies) shall be given retrospective effect unless explicitly stated so. We find no provision in said Rules which expressly gives them retroactive effect, or implies the abrogation of previous writs issued not in accordance with the same Rules. Rather, what said Rules provide is that they "shall be effective immediately," which in legal parlance, is understood as "upon promulgation." Only penal laws are given retroactive effect insofar as they favor the accused.
>
> We distinguish this case from *Republic vs. Sandiganbayan, Romualdez and Dio Island Resort, G.R. No. 88126, July 12, 1996* where the sequestration order against Dio Island Resort, dated April 14, 1986, was prepared, issued and signed not by two commissioners of the PCGG, but by the head of its task force in Region VIII. In holding that said order was not valid since it was not issued in accordance with PCGG Rules and Regulations, we explained:

Supreme Court E-Library

> "(Sec. 3 of the PCGG Rules and Regulations), couched in clear and simple language, leaves no room for interpretation. On the basis thereof, it is indubitable that under no circumstances can a sequestration or freeze order be validly issued by one not a commissioner of the PCGG.
>
> x x x x x x x x x
>
> Even assuming *arguendo* that Atty. Ramirez had been given prior authority by the PCGG to place Dio Island Resort under sequestration, nevertheless, the sequestration order he issued is still void since PCGG may not delegate its authority to sequester to its representatives and subordinates, and any such delegation is valid and ineffective."

We further said:

"In the instant case, there was clearly no prior determination made by the PCGG of a *prima facie* basis for the sequestration of Dio Island Resort, Inc. x x x

x x x x x x x x x

The absence of a prior determination by the PCGG of a *prima facie* basis for the sequestration order is, unavoidably, a fatal defect which rendered the sequestration of respondent corporation and its properties void *ab initio*. Being void *ab initio*, it is deemed nonexistent, as though it had never been issued, and therefore is not subject to ratification by the PCGG.

What were obviously lacking in the above case were the basic requisites for the validity of a sequestration order which we laid down in *BASECO vs. PCGG, 150 SCRA 181, 216, May 27, 1987,* thus:

"Section (3) of the Commission's Rules and regulations provides that sequestration or freeze (and takeover) orders issue upon the authority of at least two commissioners, based on the *affirmation or complaint of an interested party, or motu propio* (sic) when the Commission has *reasonable grounds* to believe that the issuance thereof is warranted."

In the case at bar, there is no question as to the presence of *prima facie* evidence justifying the issuance of the sequestration order against respondent corporations. But the

Supreme Court E-Library

said order cannot be nullified for lack of the other requisite (authority of at least two commissioners) since, as explained earlier, such requisite was nonexistent at the time the order was issued."

As to the argument of the Plaintiff Republic that Defendants Cojuangco, *et al*. have not shown any contrary *prima facie* proof that the properties subject matter of the writs of sequestration were legitimate acquisitions, the same is misplaced. It is a basic legal doctrine, as well as many times enunciated by the Honorable Supreme Court that when a *prima facie* proof is required in the issuance of a writ, the party seeking such extraordinary writ must establish that it is entitled to it by complying strictly with the requirements for its issuance and not the party against whom the writ is being sought for to establish that the writ should not be issued against it.

According to the Republic, the Sandiganbayan thereby gravely abused its discretion in: (*a*) in lifting WOS No. 86-0042 and No. 87-0218 despite the basic requisites for the validity of sequestration being existent; (*b*) in denying the Republic's alternative prayer for the issuance of an order of sequestration against all the subject shares of stock in accordance with the ruling in *Republic v. Sandiganbayan*, 258 SCRA 685, as stated in its *Motion For Reconsideration*; and (*c*) in deleting the last two conditions the Sandiganbayan had earlier imposed on the subject shares of stock.

We sustain the lifting of the nine WOS for the reasons made extant in the assailed resolution of October 8, 2003, *supra*.

Section 3 of the Rules of the PCGG, promulgated on April 11, 1986, provides:

Section 3. *Who may issue*. — A writ of sequestration or a freeze or hold order may be issued by the Commission upon the authority of at least two Commissioners, based on the affirmation or complaint of an interested party or *motu proprio* when the Commission has reasonable grounds to believe that the issuance thereof is warranted.

Conformably with Section 3, *supra*, WOS No. 86-0062 dated April 21, 1986; WOS No. 86-0069 dated April 22, 1986; WOS No. 86-0085 dated May 9, 1986; WOS No. 86-0095 dated

Supreme Court E-Library

May 16, 1986; WOS No. 86-0096 dated May 16, 1986; WOS No. 86-0097 dated May 16, 1986; and WOS No. 86-0098 dated May 16, 1986 were lawfully and correctly nullified considering that only one PCGG Commissioner had issued them.

Similarly, WOS No. 86-0042 dated April 8, 1986 and WOS No. 87-0218 dated May 27, 1987 were lawfully and correctly nullified — notwithstanding that WOS No. 86-0042, albeit signed by only one Commissioner (*i.e.*, Commissioner Mary Concepcion Bautista), was not at the time of its issuance subject to the two-Commissioners rule, and WOS No. 87-0218, albeit already issued under the signatures of two Commissioners — considering that both had been issued without a prior determination by the PCGG of a *prima facie* basis for the sequestration.

Plainly enough, the irregularities infirming the issuance of the several WOS could not be ignored in favor of the Republic and resolved against the persons whose properties were subject of the WOS. Where the Rules of the PCGG instituted safeguards under Section 3, *supra*, by requiring the concurrent signatures of two Commissioners to every WOS issued and the existence of a *prima facie* case of ill gotten wealth to support the issuance, the non-compliance with either of the safeguards nullified the WOS thus issued. It is already settled that sequestration, due to its tendency to impede or limit the exercise of proprietary rights by private citizens, is construed *strictly* against the State, conformably with the legal maxim that statutes in derogation of common rights are generally strictly construed and rigidly confined to the cases clearly within their scope and purpose.[86]

Consequently, the nullification of the nine WOS, being in implementation of the safeguards the PCGG itself had instituted, did not constitute any abuse of its discretion, least of all grave, on the part of the Sandiganbayan.

Nor did the Sandiganbayan gravely abuse its discretion in reducing from four to only two the conditions imposed for the

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[86] *Republic v. Sandiganbayan*, G.R. No. 119292, July 31, 1998, 293 SCRA 440, 455-456.

Supreme Court E-Library

lifting of the WOS. The Sandiganbayan thereby acted with the best of intentions, being all too aware that the claim of the Republic to the sequestered assets and properties might be prejudiced or harmed *pendente lite* unless the protective conditions were annotated in the corporate books of SMC. Moreover, the issue became academic following the Sandiganbayan's promulgation of its decision dismissing the Republic's *Amended Complaint*, which thereby removed the stated reason — "*the Republic continues to hold a claim on the shares which is yet to be resolved*" — underlying the need for the annotation of the conditions (whether four or two).

II
The Concept and Genesis of Ill-Gotten Wealth in the Philippine Setting

A brief review of the Philippine law and jurisprudence pertinent to *ill-gotten wealth* should furnish an illuminating backdrop for further discussion.

In the immediate aftermath of the peaceful 1986 EDSA Revolution, the administration of President Corazon C. Aquino saw to it, among others, that rules defining the authority of the government and its instrumentalities were promptly put in place. It is significant to point out, however, that the administration likewise defined the limitations of the authority.

The first official issuance of President Aquino, which was made on February 28, 1986, or just two days after the EDSA Revolution, was Executive Order (E.O.) No. 1, which created the Presidential Commission on Good Government (PCGG). Ostensibly, E.O. No. 1 was the first issuance in light of the EDSA Revolution having come about mainly to address the pillage of the nation's wealth by President Marcos, his family, and cronies.

E.O. No. 1 contained only two WHEREAS Clauses, to wit:

> WHEREAS, **vast resources of the government** have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad;

Supreme Court E-Library

WHEREAS, there is an urgent need to recover **all ill-gotten wealth**;[87]

Paragraph (4) of E.O. No. 2[88] further required that the wealth, to be ill-gotten, must be "acquired by them through or as a result of improper or illegal use of or the conversion of funds belonging to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their official position, authority, relationship, connection or influence to unjustly enrich themselves at the expense and to the grave damage and prejudice of the Filipino people and the Republic of the Philippines."

Although E.O. No. 1 and the other issuances dealing with ill-gotten wealth (*i.e.*, E.O. No. 2, E.O. No. 14, and E.O. No. 14-A) only identified the subject matter of ill-gotten wealth and the persons who could amass ill-gotten wealth and did not include an explicit definition of *ill-gotten wealth*, we can still discern the meaning and concept of *ill-gotten wealth* from the WHEREAS Clauses themselves of E.O. No. 1, in that *ill-gotten wealth* consisted of the "*vast resources of the government*" amassed by "former President Ferdinand E. Marcos, his immediate family, relatives and close associates both here and abroad." It is clear, therefore, that *ill-gotten wealth* would not include all the properties of President Marcos, his immediate family, relatives, and close associates but only the part that originated from the "vast resources of the government."

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[87] Bold emphasis supplied.

[88] (4) Prohibit former President Ferdinand Marcos and/or his wife, Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees from transferring, conveying, encumbering, concealing or dissipating said assets or properties in the Philippines and abroad, pending the outcome of appropriate proceedings in the Philippines to determine whether any such assets or properties were **acquired by them through or as a result of improper or illegal use of or the conversion of funds belonging to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their official position, authority, relationship, connection or influence to unjustly enrich themselves at the expense and to the grave damage and prejudice of the Filipino people and the Republic of the Philippines**.

Supreme Court E-Library

In time and unavoidably, the Supreme Court elaborated on the meaning and concept of *ill-gotten wealth.* In *Bataan Shipyard & Engineering Co., Inc. v. Presidential Commission on Good Government*,[89] or *BASECO*, for the sake of brevity, the Court held that:

> xxx until it can be determined, through appropriate judicial proceedings, **whether the property was in truth "ill-gotten,"** *i.e.*, acquired through or as a result of improper or illegal use of or the conversion of **funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions,** or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. And this, too, is the sense in which the term is commonly understood in other jurisdictions.[90]

The *BASECO* definition of *ill-gotten wealth* was reiterated in *Presidential Commission on Good Government v. Lucio C. Tan*,[91] where the Court said:

> On this point, we find it relevant to define "ill-gotten wealth." In *Bataan Shipyard and Engineering Co., Inc.*, this Court described "ill-gotten wealth" as follows:
>
> > "Ill-gotten wealth is that acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. And this, too, is the sense in which the term is commonly understood in other jurisdiction."
>
> Concerning respondents' shares of stock here, there is no evidence presented by petitioner that they belong to the Government of the

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[89] G.R. No. 75885, May 27, 1987, 150 SCRA 181, 209.

[90] Bold emphasis supplied.

[91] G.R. Nos. 173553-56, December 7, 2007, 539 SCRA 464, 481.

Supreme Court E-Library

Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions. Nor is there evidence that respondents, taking undue advantage of their connections or relationship with former President Marcos or his family, relatives and close associates, were able to acquire those shares of stock.

Incidentally, in its 1998 ruling in *Chavez v. Presidential Commission on Good Government*,[92] the Court rendered an identical definition of *ill-gotten wealth, viz*:

> xxx. We may also add that 'ill-gotten wealth,' by its very nature, assumes a public character. Based on the aforementioned Executive Orders, 'ill-gotten wealth' refers to assets and properties purportedly acquired, directly or indirectly, by former President Marcos, his immediate family, relatives and close associates through **or as a result of their improper or illegal use of government funds or properties; or their having taken undue advantage of their public office; or their use of powers, influence or relationships**, "resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines." **Clearly, the assets and properties referred to supposedly originated from the government itself**. **To all intents and purposes, therefore, they belong to the people. As such, upon reconveyance they will be returned to the public treasury**, subject only to the satisfaction of positive claims of certain persons as may be adjudged by competent courts. Another declared overriding consideration for the expeditious recovery of ill-gotten wealth is that it may be used for national economic recovery.

All these judicial pronouncements demand two concurring elements to be present before assets or properties were considered as *ill-gotten wealth,* namely: (*a*) they must have "originated from the government itself," and (*b*) they must have been taken by former President Marcos, his immediate family, relatives, and close associates *by illegal means*.

But settling the sources and the kinds of assets and property covered by E.O. No. 1 and related issuances did not complete the definition of *ill-gotten wealth*. The further requirement was

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[92] G.R. No. 130716, December 9, 1998, 299 SCRA 744, 768-769.

Supreme Court E-Library

that the assets and property should have been amassed by former President Marcos, his immediate family, relatives, and close associates both here and abroad. In this regard, identifying former President Marcos, his immediate family, and relatives was not difficult, but identifying other persons who *might be* the *close associates* of former President Marcos presented an *inherent difficulty*, because it was not fair and just to include within the term *close associates* everyone who had had any association with President Marcos, his immediate family, and relatives.

Again, through several rulings, the Court became the arbiter to determine who were the close associates within the coverage of E.O. No. 1.

In *Republic v. Migriño*,[93] the Court held that respondents Migriño, *et al.* were not necessarily among the persons covered by the term *close subordinate* or *close associate* of former President Marcos by reason alone of their having served as government officials or employees during the Marcos administration, *viz*:

> **It does not suffice, as in this case, that the respondent is or was a government official or employee during the administration of former Pres. Marcos. There must be a *prima facie* showing that the respondent unlawfully accumulated wealth by virtue of his close association or relation with former Pres. Marcos and/or his wife**. This is so because otherwise the respondent's case will fall under existing general laws and procedures on the matter. x x x

In *Cruz, Jr. v. Sandiganbayan*,[94] the Court declared that the petitioner was not a *close associate* as the term was used in E.O. No. 1 just because he had served as the President and General Manager of the GSIS during the Marcos administration.

In *Republic v. Sandiganbayan*,[95] the Court stated that respondent Maj. Gen. Josephus Q. Ramas' having been a

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[93] G.R. No. 89483, August 30, 1990, 189 SCRA 289.

[94] G.R. No. 94595, February 26, 1991, 194 SCRA 474.

[95] G.R. No. 104768, July 21, 2003, 407 SCRA 10.

Supreme Court E-Library

Commanding General of the Philippine Army during the Marcos administration "d[id] not automatically make him a subordinate of former President Ferdinand Marcos as this term is used in Executive Order Nos. 1, 2, 14 and 14-A absent a showing that he enjoyed close association with former President Marcos."

It is well to point out, consequently, that the distinction laid down by E.O. No. 1 and its related issuances, and expounded by relevant judicial pronouncements unavoidably required *competent evidentiary substantiation* made in *appropriate judicial proceedings* to determine: (*a*) whether the assets or properties involved had come from the vast resources of government, and (*b*) whether the individuals owning or holding such assets or properties were close associates of President Marcos. The requirement of *competent evidentiary substantiation* made in *appropriate judicial proceedings* was imposed because the factual premises for the reconveyance of the assets or properties in favor of the government due to their being ill-gotten wealth could not be simply assumed. Indeed, in *BASECO,*[96] the Court made this clear enough by emphatically observing:

> 6. *Government's Right and Duty to Recover All Ill-gotten Wealth*
>
> There can be no debate about the validity and eminent propriety of the Government's plan "to recover all ill-gotten wealth."
>
> Neither can there be any debate about the proposition that assuming the above described factual premises of the Executive Orders and Proclamation No. 3 to be true, to be demonstrable by competent evidence, the recovery from Marcos, his family and his minions of the assets and properties involved, is not only a right but a duty on the part of Government.
>
> **But however plain and valid that right and duty may be, still a balance must be sought with the equally compelling necessity that a proper respect be accorded and adequate protection assured, the fundamental rights of private property and free enterprise** which are deemed pillars of a free society such as ours,

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[96] *Bataan Shipyard and Engineering Co., Inc. v. Presidential Commission on Good Government, supra,* note 89, pp. 206-208.

Supreme Court E-Library

and to which all members of that society may without exception lay claim.

xxx Democracy, as a way of life enshrined in the Constitution, embraces as its necessary components freedom of conscience, freedom of expression, and freedom in the pursuit of happiness. *Along with these freedoms are included economic freedom and freedom of enterprise* within reasonable bounds and under proper control. xxx Evincing much concern for the protection of property, the Constitution distinctly recognizes the preferred position which real estate has occupied in law for ages. *Property is bound up with every aspect of social life in a democracy as democracy is conceived in the Constitution*. The Constitution realizes the indispensable role which property, owned in reasonable quantities and used legitimately, plays in the stimulation to economic effort and the formation and growth of a solid social middle class that is said to be the bulwark of democracy and the backbone of every progressive and happy country.

a. Need of Evidentiary Substantiation in Proper Suit

Consequently, **the factual premises of the Executive Orders cannot simply be assumed. They will have to be duly established by adequate proof in each case, in a proper judicial proceeding, so that the recovery of the ill-gotten wealth may be validly and properly adjudged and consummated;** although there are some who maintain that the fact — that an immense fortune, and "vast resources of the government have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad," and they have resorted to all sorts of clever schemes and manipulations to disguise and hide their illicit acquisitions — is within the realm of judicial notice, being of so extensive notoriety as to dispense with proof thereof. **Be this as it may, the requirement of evidentiary substantiation has been expressly acknowledged, and the procedure to be followed explicitly laid down, in Executive Order No. 14.** [97]

Accordingly, the Republic should furnish to the Sandiganbayan in proper judicial proceedings the competent evidence proving who were the close associates of President Marcos who had amassed assets and properties that would be rightly considered as *ill-gotten wealth.*

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[97] Bold emphasis supplied.

Supreme Court E-Library

III.
Summary Judgment was not warranted;
The Republic should have adduced evidence
to substantiate its allegations against the Respondents

We affirm the decision of November 28, 2007, because the Republic did not discharge its burden as the plaintiff to establish by preponderance of evidence that the respondents' SMC shares were illegally acquired with coconut-levy funds.

The decision of November 28, 2007 fully explained why the Sandiganbayan dismissed the Republic's case against Cojuangco, *et al.*, *viz*:

> Going over the evidence, especially the laws, *i.e.*, P.D. No. 961, P.D. No. 755, and P.D. No. 1468, over which plaintiff prayed that Court to take judicial notice of, it is worth noting that these same laws were cited by plaintiff when it filed its motion for judgment on the pleadings and/or summary judgment regarding the CIIF block of SMC shares of stock. Thus, the Court has already passed upon the same laws when it arrived at judgment determining ownership of the CIIF block of SMC shares of stock. Pertinently, in the Partial Summary Judgment promulgated on May 7, 2004, the Court gave the following rulings finding certain provisions of the above-cited laws to be constitutionally infirmed, thus:
>
> > In this case, Section 2(d) and Section 9 and 10, Article III, of P.D. Nos. 961 and 1468 mandated the UCPB to utilize the CIIF, an accumulation of a portion of the CCSF and the CIDF, for investment in the form of shares of stock *in corporations organized for the purpose of engaging in the establishment and the operation of industries and commercial activities and other allied business undertakings* relating to coconut and other palm oils industry in all aspects. The investments made by UCPB in CIIF companies are required by the said Decrees to be equitably distributed for free by the said bank to the coconut farmers (Sec. 10, P.D. No. 961 and Sec. 10, P.D. No. 1468). The public purpose sought to be served by the free distribution of the shares of stock acquired with the use of public funds is not evident in the laws mentioned. More specifically, it is not clear how private ownership of the shares

Supreme Court E-Library

of stock acquired with public funds can serve a public purpose. The mode of distribution of the shares of stock also left much room for the diversion of assets acquired through public funds into private uses or to serve directly private interests, contrary to the Constitution. In the said distribution, defendants COCOFED, *et al*. and Ballares, *et al*. admitted that UCPB followed the administrative issuances of PCA which we found to be constitutionally objectionable in our Partial Summary Judgment in Civil Case No. 0033-A, the pertinent portions of which are quoted hereunder:

x x x x x x x x x.

The distribution for free of the shares of stock of the CIIF Companies is tainted with the above-mentioned constitutional infirmities of the PCA administrative issuances. In view of the foregoing, we cannot consider the provision of P.D. No. 961 and P.D. No. 1468 and the implementing regulations issued by the PCA as valid legal basis to hold that assets acquired with public funds have legitimately become private properties.

The CIIF Companies having been acquired with public funds, the 14 CIIF-owned Holding Companies and all their assets, including the CIIF Block of SMC Shares, being public in character, belong to the government. Even granting that the 14 Holding Companies acquired the SMC Shares through CIIF advances and UCPB loans, said advances and loans are still the obligations of the said companies. The incorporating equity or capital of the 14 Holding Companies, which were allegedly used also for the acquisition of the subject SMC shares, being wholly owned by the CIIF Companies, likewise form part of the coconut levy funds, and thus belong to the government in trust for the ultimate beneficiaries thereof, which are all the coconut farmers.

x x x x x x x x x.

And, with the above-findings of the Court, the CIIF block of SMC shares were subsequently declared to be of public character and should be reconveyed to the government in trust for coconut farmers. The foregoing findings notwithstanding, a question now arises on whether the same laws can likewise serve as ultimate basis for a finding that the Cojuangco, *et al*. block of SMC shares are also imbued with public character and should rightfully be reconveyed to the government.

Supreme Court E-Library

On this point, the Court disagrees with plaintiff that reliance on said laws would suffice to prove that defendants Cojuangco, *et al.*'s acquisition of SMC shares of stock was illegal as public funds were used. For one, plaintiff's reliance thereon has always had reference only to the CIIF block of shares, and the Court has already settled the same by going over the laws and quoting related findings in the Partial Summary judgment rendered in Civil Case No. 0033-A. For another, the allegations of plaintiff pertaining to the Cojuangco block representing twenty percent (20%) of the outstanding capital stock of SMC stress defendant Cojuangco's acquisition by virtue of his positions as Chief Executive Officer of UCPB, a member-director of the Philippine Coconut Authority (PCA) Governing Board, and a director of the CIIF Oil Mills. Thus, reference to the said laws would not settle whether there was abuse on the part of defendants Cojuangco, *et al*. of their positions to acquire the SMC shares.[98]

Besides, in the Resolution of the Court on plaintiff's Motion for Partial Summary Judgment (Re: Shares in San Miguel Corporation Registered in the Respective Names of Defendants Eduardo M. Cojuangco, Jr. and the defendant Cojuangco Companies), the Court already rejected plaintiff's reference to said laws. In fact, the Court declined to grant plaintiff's motion for partial summary judgment because it simply contended that defendant Cojuangco's statements in his pleadings, which plaintiff again offered in evidence herein, regarding the presentation of a possible CIIF witness as well as UCPB records can already be considered admissions of defendants' exclusive use and misuse of coconut levy funds. In the said resolution, the Court already reminded plaintiff that the issues cannot be resolved by plaintiff's interpretation of defendant Cojuangco's statements in his brief. Thus, the substantial portion of the Resolution of the Court denying plaintiff's motion for partial summary judgment is again quoted for emphasis: [99]

> We cannot agree with the plaintiff's contention that the defendant's statements in his Pre-Trial Brief regarding the presentation of a possible CIIF witness as well as UCPB records, can already be considered as admissions of the defendant's

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[98] Bold emphasis supplied.

[99] Bold emphasis supplied.

Supreme Court E-Library

exclusive use and misuse of coconut levy funds to acquire the subject SMC shares and defendant Cojuangco's alleged taking advantage of his positions to acquire the subject SMC shares. Moreover, in ruling on a motion for summary judgment, the court "should take that view of the evidence most favorable to the party against whom it is directed, giving such party the benefit of all favorable inferences." ***Inasmuch as this issue cannot be resolved merely from an interpretation of the defendant's statements in his brief, the UCPB records must be produced and the CIIF witness must be heard to ensure that the conclusions that will be derived have factual basis and are thus, valid.***[100]

WHEREFORE, in view of the foregoing, the Motion for Partial Summary Judgment dated July 11, 2003 is hereby DENIED for lack of merit.

SO ORDERED.

(Emphasis supplied)

Even assuming that, as plaintiff prayed for, the Court takes judicial notice of the evidence it offered with respect to the Cojuangco block of SMC shares of stock, as contained in plaintiff's manifestation of purposes, still its evidence do not suffice to prove the material allegations in the complaint that Cojuangco took advantage of his positions in UCPB and PCA in order to acquire the said shares. As above-quoted, the Court, itself, has already ruled, and hereby stress that "UCPB records must be produced and the CIIF witness must be heard to ensure that the conclusions that will be derived have factual basis and are thus, valid." Besides, the Court found that there are genuine factual issues raised by defendants that need to be threshed out in a full-blown trial, and which plaintiff had the burden to substantially prove. Thus, the Court outlined these genuine factual issues as follows:

1) What are the "various sources" of funds, which defendant Cojuangco and his companies claim they utilized to acquire the disputed SMC shares?

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[100] Bold emphasis is in the original.

Supreme Court E-Library

2) Whether or not such funds acquired from alleged "various sources" can be considered coconut levy funds;

3) Whether or not defendant Cojuangco had indeed served in the governing bodies of PCA, UCPB and/or CIIF Oil Mills at the time the funds used to purchase the SMC shares were obtained such that he owed a fiduciary duty to render an account to these entities as well as to the coconut farmers;

4) Whether or not defendant Cojuangco took advantage of his position and/or close ties with then President Marcos to obtain favorable concessions or exemptions from the usual financial requirements from the lending banks and/or coco-levy funded companies, in order to raise the funds to acquire the disputed SMC shares; and if so, what are these favorable concessions or exemptions?[101]

Answers to these issues **are not evident from the submissions of plaintiff and *must therefore be proven through the presentation of relevant and competent evidence during trial.*** A perusal of the subject Motion shows that the plaintiff **hastily derived conclusions from the defendants' statements in their previous pleadings although such conclusions were not supported by categorical facts *but only mere inferences.*** xxx xxx xxx. (Emphasis supplied)[102]

Despite the foregoing pronouncement of the Court, plaintiff did not present any other evidence during the trial of this case but instead made its manifestation of purposes, that later served as its offer of evidence in the instant case, that merely used the same evidence it had already relied upon when it moved for partial summary judgment over the Cojuangco block of SMC shares. Altogether, the Court finds the same insufficient to prove plaintiff's allegations in the complaint because more than judicial notices, the factual issues require the presentation of admissible, competent and relevant evidence in accordance with Sections 3 and 4, Rule 128 of the Rules on Evidence.

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[101] Bold emphasis is in the original.

[102] Bold emphasis supplied.

Supreme Court E-Library

Moreover, the propriety of taking judicial notice of plaintiff's exhibits is aptly questioned by defendants Cojuangco, *et al.* Certainly, the Court can take judicial notice of laws pertaining to the coconut levy funds as well as decisions of the Supreme Court relative thereto, but taking judicial notice does not mean that the Court would accord full probative value to these exhibits. Judicial notice is based upon convenience and expediency for it would certainly be superfluous, inconvenient, and expensive both to parties and the court to require proof, in the ordinary way, of facts which are already known to courts. However, **a court cannot take judicial notice of a factual matter in controversy. Certainly, there are genuine factual matters in the instant case, as above-cited, which plaintiff ought to have proven with relevant and competent evidence other than the exhibits it offered**.

Referring to plaintiff's causes of action against defendants Cojuangco, *et al.*, **the Court finds its evidence insufficient to prove that the source of funds used to purchase SMC shares indeed came from coconut levy funds**. In fact, there is no direct link that the loans obtained by defendant Cojuangco, Jr. were the same money used to pay for the SMC shares. The scheme alleged to have been taken by defendant Cojuangco, Jr. was not even established by any paper trail or testimonial evidence that would have identified the same. On account of his positions in the UCPB, PCA and the CIIF Oil Mills, the Court cannot conclude that he violated the fiduciary obligations of the positions he held in the absence of proof that he was so actuated and that he abused his positions.[103]

It was plain, indeed, that Cojuangco, *et al.* had tendered genuine issues through their responsive pleadings and did not admit that the acquisition of the Cojuangco block of SMC shares had been illegal, or had been made with public funds. As a result, the Republic needed to establish its allegations with preponderant competent evidence, because, as earlier stated, the fact that property was ill gotten could not be presumed but must be substantiated with competent proof adduced in proper judicial proceedings. That the Republic opted not to adduce competent evidence thereon despite stern reminders and warnings

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[103] Decision dated November 28, 2007 in Civil Case No. 0033-F, *supra*, note 7, pp. 505-509.

Supreme Court E-Library

from the Sandiganbayan to do so revealed that the Republic did not have the competent evidence to prove its allegations against Cojuangco, *et al.*

Still, the Republic, relying on the 2001 holding in *Republic v. COCOFED*,[104] pleads in its petition for review (G.R. No. 180702) that:

> With all due respect, the Honorable Sandiganbayan failed to consider legal precepts and procedural principles *vis-à-vis* the records of the case showing that the funds or "various loans" or "advances" used in the acquisition of the disputed SMC Shares ultimately came from the coconut levy funds.
>
> As discussed hereunder, respondents' own admissions in their Answers and Pre-Trial Briefs confirm that the "various sources" of funds utilized in the acquisition of the disputed SMC shares came from "borrowings" and "advances" from the UCPB and the CIIF Oil Mills.[105]

Thereby, the Republic would have the Sandiganbayan pronounce the block of SMC shares of stock acquired by Cojuangco, *et al.* as *ill-gotten wealth* even without the Republic first presenting preponderant evidence establishing that such block had been acquired illegally and with the use of coconut levy funds.

The Court cannot heed the Republic's pleas for the following reasons:

To begin with, it is notable that the decision of November 28, 2007 *did not rule* on whether coconut levy funds were public funds or not. The silence of the Sandiganbayan on the matter was probably due to its not seeing the need for such ruling following its conclusion that the Republic had not preponderantly established the *source* of the funds used to pay the purchase price of the concerned SMC shares, and whether the shares had been acquired with the use of coconut levy funds.

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[104] G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462.

[105] *Rollo* (G.R. No. 180702), Vol. 2, pp. 427-428.

Supreme Court E-Library

Secondly, the ruling in *Republic v. COCOFED*[106] determined only whether certain stockholders of the UCPB could vote in the stockholders' meeting that had been called. The issue now before the Court could not be controlled by the ruling in *Republic v. COCOFED*, however, for even as that ruling determined the issue of voting, the Court was forthright enough about not thereby preempting the Sandiganbayan's decisions *on the merits* on *ill-gotten wealth* in the several cases then pending, including this one, *viz*:

> In making this ruling, we are in no way preempting the proceedings the Sandiganbayan may conduct or the final judgment it may promulgate in Civil Case No. 0033-A, 0033-B and 0033-F. Our determination here is merely *prima facie*, and should not bar the anti-graft court from making a final ruling, after proper trial and hearing, on the issues and prayers in the said civil cases, particularly in reference to the ownership of the subject shares.
>
> **We also lay down the caveat that, in declaring the coco levy funds to be *prima facie* public in character, we are not ruling in any final manner on their classification — whether they are general or trust or special funds — since such classification is not at issue here. Suffice it to say that the public nature of the coco levy funds is decreed by the Court only for the purpose of determining the right to vote the shares, pending the final outcome of the said civil cases.**
>
> **Neither are we resolving in the present case the question of whether the shares held by Respondent Cojuangco are, as he claims, the result of private enterprise. This factual matter should also be taken up in the final decision in the cited cases that are pending in the court *a quo*. Again, suffice it to say that the only issue settled here is the right of PCGG to vote the sequestered shares, pending the final outcome of said cases**.

Thirdly, the Republic's assertion that coconut levy funds had been used to source the payment for the Cojuangco block of SMC shares was premised on its allegation that the UCPB and the CIIF Oil Mills were public corporations. But the premise was grossly erroneous and overly presumptuous, because:

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[106] *Supra*, note 104.

Supreme Court E-Library

(*a*) The fact of the UCPB and the CIIF Oil Mills being public corporations or government-owned or government-controlled corporations precisely remained *controverted* by Cojuangco, *et al.* in light of the lack of any competent *to that effect* being in the records;

(*b*) Cojuangco explicitly averred in paragraph 2.01.(*b*) of his *Answer* that the UCPB was a "private corporation"; and

(*c*) The Republic did not competently identify or establish which ones of the Cojuangco corporations had supposedly received advances from the CIIF Oil Mills.

Fourthly, the Republic asserts that the contested block of shares had been paid for with "borrowings" from the UCPB and "advances" from the CIIF Oil Mills, and that such borrowings and advances had been illegal because the shares had not been purchased for the "benefit of the Coconut Farmers." To buttress its assertion, the Republic relied on the admissions supposedly made in paragraph 2.01 of Cojuangco's *Answer* in relation to paragraph 4 of the Republic's *Amended Complaint*.

The best way to know what paragraph 2.01 of Cojuangco's *Answer* admitted is to refer to both paragraph 4 of the *Amended Complaint* and paragraph 2.01 of his *Answer*, which are hereunder quoted:

Paragraph 4 of the *Amended Complaint*

4. Defendant EDUARDO M. COJUANGCO, JR., was Governor of Tarlac, Congressman of then First District of Tarlac and Ambassador-at-Large in the Marcos Administration. He was commissioned Lieutenant Colonel in the Philippine Air Force, Reserve. Defendant Eduardo M. Cojuangco, Jr., otherwise known as the "Coconut King" was head of the coconut monopoly which was instituted by Defendant Ferdinand E. Marcos, by virtue of the Presidential Decrees. Defendant Eduardo E. Cojuangco, Jr., who was also one of the closest associates of the Defendant Ferdinand E. Marcos, held the positions of Director of the Philippine Coconut Authority, the United Coconut Mills, Inc., President and Board Director of the United Coconut Planters Bank, United Coconut Planters Life Assurance Corporation, and United Coconut Chemicals, Inc. He was also the Chairman of the Board and Chief Executive

Supreme Court E-Library

Officer and the controlling stockholder of the San Miguel Corporation. He may be served summons at 45 Balete Drive, Quezon City or at 136 East 9th Street, Quezon City.

Paragraph 2.01 of Respondent Cojuangco's *Answer*

2.01. Herein defendant admits paragraph 4 only insofar as it alleges the following:

(a) That herein defendant has held the following positions in government: Governor of Tarlac, Congressman of the then First District of Tarlac, Ambassador-at-Large, Lieutenant Colonel in the Philippine Air Force and Director of the Philippines Coconut Authority;

(b) That he held the following positions in private corporations: Member of the Board of Directors of the United Coconut Oil Mills, Inc.; President and member of the Board of Directors of the United Coconut Planters Bank, United Coconut Planters Life Assurance Corporation, and United Coconut Chemicals, Inc.; Chairman of the Board and Chief Executive of San Miguel Corporation; and

(c) That he may be served with summons at 136 East 9th Street, Quezon City.

Herein defendant specifically denies the rest of the allegations of paragraph 4, including any insinuation that whatever association he may have had with the late Ferdinand Marcos or Imelda Marcos has been in connection with any of the acts or transactions alleged in the complaint or for any unlawful purpose.

It is basic in remedial law that a defendant in a civil case must apprise the trial court and the adverse party of the facts alleged by the complaint that he admits and of the facts alleged by the complaint that he wishes to place into contention. The defendant does the former either by stating in his answer that they are true or by failing to properly deny them. There are two ways of denying alleged facts: one is by general denial, and the other, by specific denial.[107]

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[107] Friedenthal, *et al.*, *Civil Procedure*, 2nd Edition, §§5.18 and 5.19.

Supreme Court E-Library

In this jurisdiction, only a specific denial shall be sufficient to place into contention an alleged fact.[108] Under Section 10,[109] Rule 8 of the *Rules of Court*, a specific denial of an allegation of the complaint may be made in any of three ways, namely: (*a*) a defendant specifies each material allegation of fact the truth of which he does not admit and, whenever practicable, sets forth the substance of the matters upon which he relies to support his denial; (*b*) a defendant who desires to deny only a part of an averment specifies so much of it as is true and material and denies only the remainder; and (*c*) a defendant who is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint states so, which has the effect of a denial.

The express qualifications contained in paragraph 2.01 of Cojuangco's *Answer* constituted efficient specific denials of the averments of paragraph 2 of the Republic's *Amended Complaint* under the first method mentioned in Section 10 of Rule 8, *supra*. Indeed, the aforequoted paragraphs of the *Amended Complaint* and of Cojuangco's *Answer* indicate that Cojuangco thereby *expressly qualified* his admission of having been the President and a Director of the UCPB with the averment that the UCPB was a "private corporation"; that his *Answer*'s allegation of his being a member of the Board of Directors of the United Coconut Oil Mills, Inc. did not admit that he was a member of the Board of Directors of the CIIF Oil Mills, because the United Coconut

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[108] Section 11, Rule 8, *Rules of Court*, provides:

Section 11. Allegations not specifically denied deemed admitted. — Material averment in the complaint, other than those as to the amount of unliquidated damages, shall be deemed admitted when not specifically denied. Allegations of usury in a complaint to recover usurious interest are deemed admitted if not denied under oath. (1a,R9).

[109] Section 10. *Specific denial*. — A defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial. Where a defendant desires to deny only a part of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state, and this shall have the effect of a denial. (10a)

Supreme Court E-Library

Oil Mills, Inc. was not one of the CIIF Oil Mills; and that his *Answer* nowhere contained any admission or statement that he had held the various positions in the government or in the private corporations at the same time *and* in 1983, the time when the contested acquisition of the SMC shares of stock took place.

What the Court stated in *Bitong v. Court of Appeals (Fifth Division)*[110] as to admissions is illuminating:

> When taken in its totality, the *Amended Answer to the Amended Petition,* or even the *Answer to the Amended Petition* alone, clearly raises an issue as to the legal personality of petitioner to file the complaint. **Every alleged admission is taken as an entirety of the fact which makes for the one side with the qualifications which limit, modify or destroy its effect on the other side.** The reason for this is, where part of a statement of a party is used against him as an admission, the court should weigh any other portion connected with the statement, which tends to neutralize or explain the portion which is against interest.
>
> In other words, **while the admission is admissible in evidence, its probative value is to be determined from the whole statement and others intimately related or connected therewith as an integrated unit.** Although acts or facts admitted do not require proof and cannot be contradicted, however, evidence *aliunde* can be presented to show that the admission was made through palpable mistake. **The rule is always in favor of liberality in construction of pleadings so that the real matter in dispute may be submitted to the judgment of the court.**

And, lastly, the Republic cites the following portions of the joint Pre-Trial Brief of Cojuangco, *et al.*,[111] to wit:

> IV.
> PROPOSED EVIDENCE
>
> x x x x x x x x x
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> 4.01. xxx Assuming, however, that plaintiff presents evidence to support its principal contentions, defendant's evidence in rebuttal

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[110] G.R. No. 123553, July 13, 1998, 292 SCRA 503, 520.

[111] Petition, pp. 40-41; *rollo* (G.R. No. 180702), Vol. 2, pp. 435-436.

Supreme Court E-Library

would include testimonial and documentary evidence showing: a) the ownership of the shares of stock prior to their acquisition by respondents (listed in Annexes 'A" and 'B"); b) the consideration for the acquisition of the shares of stock by the persons or companies in whose names the shares of stock are now registered; and c) **the source of the funds used to pay the purchase price.**

4.02. **Herein respondents intend to present the following evidence:**

x x x x x x x x x

b. Proposed Exhibits ____, ____, ____

Records of the United Coconut Planters Bank which would show borrowings of the companies listed in Annexes "A" and "B", or companies affiliated or associated with them, which were used to source payment of the shares of stock of the San Miguel Corporation subject of this case.

4.03. Witnesses.

x x x x x x x x x

(b) **A representative of the United Coconut Planters Bank who will testify in regard the loans which were used to source the payment of the price of SMC shares of stock.**

(c) **A representative from the CIIF Oil Mills who will testify in regard the loans or credit advances which were used to source the payment of the purchase price of the SMC shares of stock**.

The Republic insists that the aforequoted portions of the joint Pre-Trial Brief were Cojuangco, *et al.*'s admission that:

(*a*) Cojuangco had received money from the UCPB, a bank entrusted by law with the administration of the coconut levy funds; and

(*b*) Cojuangco had received more money from the CIIF Oil Mills in which part of the CIIF funds had been placed, and thereby used the funds of the UCPB and the CIIF as capital to buy *his* SMC shares.[112]

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[112] *Id.*, p. 436.

Supreme Court E-Library

We disagree with the Republic's posture.

The statements found in the joint Pre-Trial Brief of Cojuangco, *et al*. were noticeably written beneath the heading of *Proposed Evidence*. Such location indicated that the statements were only being *proposed*, that is, they were *not yet* intended or offered as admission of any fact stated therein. In other words, the matters stated or set forth therein might *or* might not be presented at all. Also, the text and tenor of the statements *expressly conditioned* the proposal on the Republic ultimately presenting its evidence in the action. After the Republic opted not to present its evidence, the condition did not transpire; hence, the proposed admissions, assuming that they were that, did not materialize.

Obviously, too, the statements found under the heading of *Proposed Evidence* in the joint Pre-Trial Brief were incomplete and inadequate on the important details of the *supposed* transactions (*i.e*., alleged borrowings and advances). As such, they could not constitute admissions that the funds had come from borrowings by Cojuangco, *et al.* from the UCPB or had been credit advances from the CIIF Oil Companies. Moreover, the purpose for presenting the records of the UCPB and the representatives of the UCPB and of the still unidentified or unnamed CIIF Oil Mills as declared in the joint Pre-Trial Brief did not at all show whether the UCPB and/or the unidentified or unnamed CIIF Oil Mills were the *only* sources of funding, or that such institutions, assuming them to be the sources of the funding, had been the *only* sources of funding. Such ambiguousness disqualified the statements from being relied upon as admissions. It is fundamental that any statement, to be considered as an admission for purposes of judicial proceedings, should be *definite*, *certain* and *unequivocal*;[113] otherwise, the disputed fact will not get settled.

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[113] *CMS Logging, Inc. v. Court of Appeals,* G.R. No. L-41420, July 10, 1992, 211 SCRA 374, 380-381; citing *Bank of the Philippine Islands v. Fidelity & Surety Co*., 51 Phil. 57, 64 ('a statement is not competent as an admission where it does not, under a reasonable construction, appear to admit or acknowledge the fact which is sought to be proved by it.' An admission or declaration to be competent must have been expressed in definite, certain and unequivocal language."

Supreme Court E-Library

Another reason for rejecting the Republic's posture is that the Sandiganbayan, as the trial court, was in no position to *second-guess* what the non-presented records of the UCPB *would* show as the borrowings made by the corporations listed in Annexes A and B, or by the companies affiliated or associated with them, that "were used to source payment of the shares of stock of the San Miguel Corporation subject of this case," or what the representative of the UCPB or the representative of the CIIF Oil Mills would testify about loans or credit advances used to source the payment of the price of SMC shares of stock.

Lastly, the *Rules of Court* has no rule that treats the statements found under the heading *Proposed Evidence* as admissions binding Cojuangco, *et al.* On the contrary, the *Rules of Court* has even distinguished between *admitted facts* and *facts proposed to be admitted* during the stage of pre-trial. Section 6 (b),[114] Rule 18 of the *Rules of Court*, requires a Pre-Trial Brief to include a *summary of admitted facts* and a *proposed stipulation of facts*. Complying with the requirement, the joint Pre-Trial Brief of Cojuangco, *et al.* included the *summary of admitted facts* in its paragraph 3.00 of its Item III, separately and distinctly from the *Proposed Evidence*, to wit:

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[114] Section 6. *Pre-trial brief.* — The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

(a) A statement of their willingness to enter into amicable settlement or alternative modes of dispute resolution, indicating the desired terms thereof;

(b) A summary of admitted facts and proposed stipulation of facts;

(c) The issues to be tried or resolved;

(d) The documents or exhibits to be presented, stating the purpose thereof;

(e) A manifestation of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners; and

(f) The number and names of the witnesses, and the substance of their respective testimonies.

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial. (n)

Supreme Court E-Library

III.
SUMMARY OF UNDISPUTED FACTS

3.00. Based on the complaint and the answer, the acquisition of the San Miguel shares by, and their registration in the names of, the companies listed in Annexes "A" and "B" may be deemed undisputed.

3.01. **All other allegations in the complaint are disputed**.[115]

The burden of proof, according to Section 1, Rule 131 of the *Rules of Court*, is "the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." Here, the Republic, being the plaintiff, was the party that carried the burden of proof. That burden required it to demonstrate through competent evidence that the respondents, as defendants, had purchased the SMC shares of stock with the use of public funds; and that the affected shares of stock constituted *ill-gotten wealth*. The Republic was well apprised of its burden of proof, first through the joinder of issues made by the responsive pleadings of the defendants, including Cojuangco, *et al*. The Republic was further reminded through the pre-trial order and the Resolution denying its *Motion for Summary Judgment*, *supra*, of the duty to prove the factual allegations on ill-gotten wealth against Cojuangco, *et al*., specifically the following disputed matters:

(*a*) When the loans or advances were incurred;

(*b*) The amount of the loans from the UCPB and of the credit advances from the CIIF Oil Mills, including the specific CIIF Oil Mills involved;

(*c*) The identities of the borrowers, that is, all of the respondent corporations together, or separately; and the amounts of the borrowings;

(*d*) The conditions attendant to the loans or advances, if any;

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[115] *Rollo* (G.R. No. 180702), Vol. 2, p. 634 (*Pre-Trial Brief (Re: Acquisition of San Miguel Corporation [SMC]*) filed by Cojuangco, *et al.*, p. 9).

Supreme Court E-Library

(*e*) The manner, form, and time of the payments made to Zobel or to the Ayala Group, whether by check, letter of credit, or some other form; and

(*f*) Whether the loans were paid, and whether the advances were liquidated.

With the Republic nonetheless choosing not to adduce evidence proving the factual allegations, particularly the aforementioned matters, and instead opting to pursue its claims by *Motion for Summary Judgment*, the Sandiganbayan became completely deprived of the means to know the necessary but crucial details of the transactions on the acquisition of the contested block of shares. The Republic's failure to adduce evidence shifted no burden to the respondents to establish anything, for it was basic that the party who asserts, not the party who denies, must prove.[116] Indeed, in a civil action, the plaintiff has the burden of pleading every essential fact and element of the cause of action and proving them by preponderance of evidence. This means that if the defendant merely denies each of the plaintiff's allegations and neither side produces evidence on any such element, the plaintiff must necessarily fail in the action.[117] Thus, the Sandiganbayan correctly dismissed Civil Case No. 0033-F for failure of the Republic to prove its case by preponderant evidence.

A summary judgment under Rule 35 of the *Rules of Court* is a procedural technique that is proper only when there is no

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[116] *Martin v. Court of Appeals*, 205 SCRA 591, 596 [1995]; *Luxuria Homes, Inc. v. Court of Appeals*, 302 SCRA 315 [1999].

[117] I Jones on Evidence, (1992) §3.12; see also *Vitarich Corporation v. Losin*, G.R. No. 181560, November 15, 2010; *Hyatt Elevators and Escalators Corp. v. Cathedral Heights Building Complex Association, Inc.*, G.R. No. 173881, December 1, 2010; *Reyes v. Century Canning Corporation*, G.R. No. 165377, February 16, 2010 (It is a basic rule in evidence that each party to a case must prove his own affirmative allegations by the degree of evidence required by law. In civil cases, the party having the burden of proof must establish his case by preponderance of evidence, or that evidence that is of greater weight or is more convincing than that which is in opposition to it. It does not mean absolute truth; rather, it means that the testimony of one side is more believable than that of the other side, and that the probability of truth is on one side than on the other.)

Supreme Court E-Library

genuine issue as to the existence of a material fact and the moving party is entitled to a judgment as a matter of law.[118] It is a method intended to expedite or promptly dispose of cases where the facts appear *undisputed* and *certain* from the pleadings, depositions, admissions, and affidavits on record.[119] Upon a motion for summary judgment the court's sole function is to determine whether there is an issue of fact to be tried, and all doubts as to the existence of an issue of fact must be resolved *against* the moving party. In other words, a party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, and any doubt as to the existence of such an issue is resolved against the movant. Thus, in ruling on a motion for summary judgment, the court should take that view of the evidence most favorable to the party against whom it is directed, giving that party the benefit of all favorable inferences.[120]

The term *genuine issue* has been defined as an issue of fact that calls for the presentation of evidence as distinguished from an issue that is sham, fictitious, contrived, set up in bad faith, and patently unsubstantial so as not to constitute a genuine issue for trial. The court can determine this on the basis of the pleadings, admissions, documents, affidavits, and counter-affidavits submitted by the parties to the court. Where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial.[121]

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[118] Section 3, Rule 35, *Rules of Court*; see *Excelsa Industries, Inc. v. Court of Appeals*, G.R. No. 105455, August 23, 1995, 247 SCRA 560, 566; *Solid Manila Corporation v. Bio Hong Trading Co., Inc.*, G.R. No. 90596, April 8, 1991, 195 SCRA 748, 756; *Arradaza v. Court of Appeals*, G.R. No. 50422, February 8, 1989, 170 SCRA 12; *De Leon v. Faustino*, 110 Phil. 249.

[119] *Viajar v. Estenzo*, G.R. No. L-45321, April 30, 1979, 89 SCRA 685, 696; *Bayang v. Court of Appeals*, G.R. No. 53564, February 27, 1987, 148 SCRA 91, 94.

[120] *Gatchalian v. Pavilin*, G.R. No. L-17619, October 31, 1962, 6 SCRA 508, 512.

[121] *Paz v. Court of Appeals*, G.R. No. 85332, January 11, 1990, 181 SCRA 26, 30; *Garcia v. Court of Appeals*, G.R. Nos. 82282-83, November

Supreme Court E-Library

Well-settled is the rule that a party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact.[122] Upon that party's shoulders rests the burden to prove the cause of action, and to show that the defense is interposed solely for the purpose of delay. After the burden has been discharged, the defendant has the burden to show facts sufficient to entitle him to defend.[123] Any doubt as to the propriety of a summary judgment shall be resolved against the moving party.

We need not stress that the trial courts have limited authority to render summary judgments and may do so only in cases where no genuine issue as to any material fact clearly exists between the parties. The rule on summary judgment does not invest the trial courts with jurisdiction to try summarily the factual issues upon affidavits, but authorizes summary judgment only when it appears clear that there is no genuine issue as to any material fact.[124]

IV.

Republic's burden to establish by preponderance of evidence that respondents' SMC shares had been illegally acquired with coconut-levy funds was not discharged

Madame Justice Carpio Morales argues in her dissent that although the contested SMC shares could be inescapably treated

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24, 1988, 167 SCRA 815; *Cadirao v. Estenzo*, G.R. No. L-42408, September 21, 1984, 132 SCRA 93, 100; *Vergara, Sr. v. Suelto*, G.R. No. 74766, December 21, 1987, 156 SCRA 753; *Philippine National Bank v. Noah's Ark Sugar Refinery*, G.R. No. 107243, September 1, 1993, 226 SCRA 36, 42.

[122] *Cotabato Timberland Co., Inc. v. C. Alcantara and Sons, Inc.*, G.R. No. 145469, May 28, 2004, 430 SCRA 227; *Viajar v. Estenzo, supra*; *Paz v. Court of Appeals, supra.*

[123] *Estrada v. Consolacion*, G.R. No. L-40948, June 29, 1976, 71 SCRA 523, 529.

[124] *Archipelago Builders v. Intermediate Appellate Court*, G.R. No. 75282, February 19, 1991, 194 SCRA 207, 210; *Viajar v. Estenzo, supra; Paz v. Court of Appeals, supra.*

Supreme Court E-Library

as fruits of funds that are *prima facie* public in character, Cojuangco, *et al.* abstained from presenting countervailing evidence; and that with the Republic having shown that the SMC shares came into fruition from coco levy funds that are *prima facie* public funds, Cojuangco, *et al.* had to go forward with contradicting evidence, but did not.

The Court disagrees. We cannot reverse the decision of November 28, 2007 on the basis alone of judicial pronouncements to the effect that the coconut levy funds were *prima facie* public funds,[125] but without any competent evidence linking the acquisition of the block of SMC shares by Cojuangco, *et al.* to the coconut levy funds.

V.
No violation of the DOSRI and Single Borrower's Limit restrictions

The Republic's lack of proof on the source of the funds by which Cojuangco, *et al.* had acquired their block of SMC shares has made it shift its position, that it now suggests that Cojuangco had been enabled to obtain the loans by the issuance of LOI 926 exempting the UCPB from the DOSRI and the Single Borrower's Limit restrictions.

We reject the Republic's suggestion.

Firstly, as earlier pointed out, the Republic adduced no evidence on the significant particulars of the supposed loan, like the amount, the actual borrower, the approving official, *etc*. It did not also establish whether or not the loans were DOSRI[126] or issued in

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[125] *Id.*, citing *Republic v. COCOFED, supra,* note 111; and *Republic v. Sandiganbayan* (*First Division*), G.R. No. 118661, January 22, 2007, 512 SCRA 25.

[126] DOSRI is the acronym derived from the first letters of the words Directors, Officers, Stockholders and their Related Interests. The DOSRI restriction is designed to prevent undue advantage to be granted to such bank officers and their related interests in the grant of bank loans, credit accommodations, and guarantees that may be extended, directly or indirectly, by a bank to its directors, officers, stockholders and their related interests; and limits the outstanding loans, credit accommodations, and guarantees that

Supreme Court E-Library

violation of the Single Borrower's Limit. Secondly, the Republic could not outrightly assume that President Marcos had issued LOI 926 for the purpose of allowing the loans by the UCPB in favor of Cojuangco. There must be competent evidence to that effect. And, finally, the loans, assuming that they were of a DOSRI nature or without the benefit of the required approvals or in excess of the Single Borrower's Limit, would not be void for that reason. Instead, the bank or the officers responsible for the approval and grant of the DOSRI loan would be subject only to sanctions under the law.[127]

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a bank may extend to each of its stockholders, directors, or officers and their related interest to an amount equivalent to their respective unencumbered deposits and book value of their paid-in capital contributions in the bank.

The applicable DOSRI provision was Section 83 of Republic Act No. 337 (*General Banking Law*), as amended by P.D. No. 1795, to wit:

> Section 83. No director or officer of any banking institution shall, either directly or indirectly, for himself or as the representative or agent of other, borrow any of the deposits of funds of such banks, nor shall he become a guarantor, indorser, or surety for loans from such bank to others, or in any manner be an obligor for money borrowed from the bank or loaned by it, except with the written approval of the majority of the directors of the bank, excluding the director concerned. Any such approval shall be entered upon the records of the corporation and a copy of such entry shall be transmitted forthwith to the Superintendent of Banks. The office of any director or officer of a bank who violates the provisions of this section shall immediately become vacant and the director or officer shall be punished by imprisonment of not less than one year nor more than ten years and by a fine of not less than one thousand nor more than ten thousand pesos.
>
> The Monetary Board may regulate the amount of credit accommodations that may be extended, directly or indirectly, by banking institutions to their directors, officers, or stockholders. However, the outstanding credit accommodations which a bank may extend to each of its stockholders owning two percent (2%) or more of the subscribed capital stock, its directors, or its officers, shall be limited to an amount equivalent to the respective outstanding deposits and book value of the paid-in capital contribution in the bank: Provided, however, That loans and advances to officers in the form of fringe benefits granted in accordance with rules and regulations as may be prescribed by the Monetary Board shall not be subject to the preceding limitation.

[127] *E.g.*, Section 66, Republic Act No. 8791 (*General Banking Law of 2000*), *viz*:

Supreme Court E-Library

VI.

Cojuangco violated no fiduciary duties

The Republic invokes the following pertinent statutory provisions of the *Civil Code*, to wit:

Article 1455. When any trustee, guardian or other person holding a fiduciary relationship uses trust funds for the purchase of property and causes the conveyance to be made to him or to a third person, a trust is established by operation of law in favor of the person to whom the funds belong.

Article 1456. If property is acquired through mistake or fraud, the person obtaining it is by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

and the *Corporation Code*, as follows:

Section 31. *Liability of directors, trustees or officers.*—Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors, or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.

Section 66. *Penalty for Violations of this Act*. — Unless otherwise herein provided, the violation of any of the provisions of this Act shall be subject to Sections 34, 35, 36 and 37 of the New Central Bank Act. If the offender is a director or officer of a bank, quasi-bank or trust entity, the Monetary Board may also suspend or remove such director or officer. If the violation is committed by a corporation, such corporation may be dissolved by *quo warranto* proceedings instituted by the Solicitor General.

Supreme Court E-Library

Did Cojuangco breach his "fiduciary duties" as an officer and member of the Board of Directors of the UCPB? Did his acquisition and holding of the contested SMC shares come under a constructive trust in favor of the Republic?

The answers to these queries are in the negative.

The conditions for the application of Articles 1455 and 1456 of the *Civil Code* (like the trustee using trust funds to purchase, or a person acquiring property through mistake or fraud), and Section 31 of the *Corporation Code* (like a director or trustee willfully and knowingly voting for or assenting to patently unlawful acts of the corporation, among others) require factual foundations to be first laid out in appropriate judicial proceedings. Hence, concluding that Cojuangco breached fiduciary duties as an officer and member of the Board of Directors of the UCPB *without competent evidence thereon* would be unwarranted and unreasonable.

Thus, the Sandiganbayan could not fairly find that Cojuangco had committed breach of any fiduciary duties as an officer and member of the Board of Directors of the UCPB. For one, the *Amended Complaint* contained no clear factual allegation on which to predicate the application of Articles 1455 and 1456 of the *Civil Code*, and Section 31 of the *Corporation Code*. Although the trust relationship supposedly arose from Cojuangco's being an officer and member of the Board of Directors of the UCPB, the *link* between this alleged fact and the borrowings or advances was not established. Nor was there evidence on the loans or borrowings, their amounts, the approving authority, *etc*. As trial court, the Sandiganbayan could not presume his breach of fiduciary duties without evidence showing so, for fraud or breach of trust is never presumed, but must be alleged *and* proved.[128]

The thrust of the Republic that the funds were *borrowed* or *lent* might even preclude any consequent trust implication. In a contract of loan, one of the parties (*creditor*) delivers money or other consumable thing to another (*debtor*) on the condition

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[128] *Ng Wee v. Tankiansee*, G.R. No. 171124, February 13, 2008, 545 SCRA 263.

that the same amount of the same kind and quality shall be paid.[129] Owing to the consumable nature of the thing loaned, the resulting duty of the borrower in a contract of loan is *to pay,* not *to return,* to the creditor or lender the very thing loaned. This explains why the ownership of the thing loaned is transferred to the debtor upon perfection of the contract.[130] Ownership of the thing loaned having transferred, the debtor enjoys all the rights conferred to an owner of property, including the right to use and enjoy (*jus utendi*), to consume the thing by its use (*jus abutendi*), and to dispose (*jus disponendi*), subject to such limitations as may be provided by law.[131] Evidently, the resulting relationship between a creditor and debtor in a contract of loan cannot be characterized as fiduciary.[132]

To say that a relationship is fiduciary when existing laws do not provide for such requires evidence that confidence is reposed by one party in another who exercises dominion and influence. Absent any special facts and circumstances proving a higher degree of responsibility, any dealings between a lender and borrower are not fiduciary in nature.[133] This explains why, for example, a trust receipt transaction is not classified as a simple loan and is characterized as fiduciary, because the *Trust Receipts Law* (P.D. No. 115) punishes the dishonesty and abuse of confidence in the handling of money or goods to the prejudice of another regardless of whether the latter is the owner.[134]

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[129] Article 1933, *Civil Code*.

[130] See Article 1953, *Civil Code*.

[131] Article 428, *Civil Code*.

[132] See *Yong Chan Kim v. People*, G.R. No. 84719, January 5, 1991, 193 SCRA 344, 353-354, where the Court has ruled that there can be no fiduciary relationship created when the ownership of money was transferred, and for which a criminal action for *estafa* cannot prosper.

[133] *Oak Ridge Precision Industries, Inc. v. First Tennessee Bank National Association*, 835 S.W.2d 25, 30 (Tenn. Ct. App. 1992); *Foster Business Park, LLC v. Winfree*, No. M2006-02340-COA-R3-CV, 2009 WL 113242 (Tenn. Ct. App., 2009).

[134] *Consolidated Bank and Trust Corporation v. Court of Appeals*, G.R. No. 114286, April 19, 2001, 356 SCRA 671,680; citing *Colinares v. Court of Appeals*, G.R. No. 90828, September 5, 2000, 339 SCRA 609, 623.

Supreme Court E-Library

Based on the foregoing, a debtor can appropriate the thing loaned without any responsibility or duty to his creditor to return the very thing that was loaned or to report how the proceeds were used. Nor can he be compelled to return the proceeds and fruits of the loan, for there is nothing under our laws that compel a debtor in a contract of loan to do so. As owner, the debtor can dispose of the thing borrowed and his act will not be considered misappropriation of the thing.[135] The only liability on his part is to pay the loan together with the interest that is either stipulated or provided under existing laws.

WHEREFORE, the Court dismisses the petitions for *certiorari* in G.R. Nos. 166859 and 169023; denies the petition for review on *certiorari* in G.R. No. 180702; and, accordingly, affirms the decision promulgated by the Sandiganbayan on November 28, 2007 in Civil Case No. 0033-F.

The Court declares that the block of shares in San Miguel Corporation in the names of respondents Cojuangco, *et al.* subject of Civil Case No. 0033-F is the exclusive property of Cojuangco, *et al.* as registered owners.

Accordingly, the lifting and setting aside of the Writs of Sequestration affecting said block of shares (namely: Writ of Sequestration No. 86-0062 dated April 21, 1986; Writ of Sequestration No. 86-0069 dated April 22, 1986; Writ of Sequestration No. 86-0085 dated May 9, 1986; Writ of Sequestration No. 86-0095 dated May 16, 1986; Writ of Sequestration No. 86-0096 dated May 16, 1986; Writ of Sequestration No. 86-0097 dated May 16, 1986; Writ of Sequestration No. 86-0098 dated May 16, 1986; Writ of Sequestration No. 86-0042 dated April 8, 1986; and Writ of Sequestration No. 87-0218 dated May 27, 1987) are affirmed; and the annotation of the conditions prescribed in the Resolutions promulgated on October 8, 2003 and June 24, 2005 is cancelled.

SO ORDERED.

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[135] De Leon, *Comments and Cases on Credit Transactions*, 2006 Edition, p. 30.

Corona, C.J., Velasco, Jr., del Castillo, Abad, Villarama, Jr., and *Perez, JJ.,* concur.

Carpio Morales and *Brion, JJ.,* please see dissenting opinions.

Mendoza, J., joins the position of *J.* Brion.

Sereno, J., joins the dissent of *J.* Carpio Morales.

Carpio, J., no part. He is one of petitioners in a petition to declare the coco levy funds public funds.

Nachura, J., no part. Signed pleading as Sol. Gen.

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

DISSENTING OPINION

CARPIO MORALES, *J.*:

Before the Court are three consolidated[1] petitions — G.R. No. 166859, G.R. No. 169203 and G.R. No. 180702 — which involve related issues raised in Sandiganbayan Civil Case No. 0033-F, one of eight subdivided cases[2] arising from Civil

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[1] Per Resolution of January 28, 2008, *rollo* (G.R. No. 180702), Vol. III, pp. 1216-1217. The Court *en banc*, by Resolution of February 5, 2008, accepted the transfer and consolidation.

[2] *Vide rollo* (G.R. No. 169203), p. 46. The eight cases are:

Case No.	Subject Matter
Civil Case No. 0033-A	Anomalous Purchase and Use of First United Bank (now UCPB)
Civil Case No. 0033-B	Creation of Companies out of Coco Levy Funds
Civil Case No. 0033-C	Creation and Operation of Bugsuk Project and Award of ₱998M Damages to Agricultural Investors, Inc.
Civil Case No. 0033-D	Disadvantageous Purchases and Settlement of the Accounts of Oil Mills out of the Coco Levy Funds

Supreme Court E-Library

Case No. 0033, the original complaint filed by the Republic of the Philippines (Republic) before the Sandiganbayan on July 31, 1987 which was, from 1987 to 1991, thrice amended or expanded, against respondents Eduardo Cojuangco, Jr. (Cojuangco) and Cojuangco-owned corporations (Cojuangco companies), and other defendants.

Subject of Civil Case No. 0033-F are two blocks of shares of stock in San Miguel Corporation (SMC): one approximately 31% of the outstanding capital stock of SMC consisting of 33,133,266 shares known as the Coconut Industry Investment Fund (CIIF) or **"CIIF Block"** registered in the names of 14 holding companies,[3] and another approximately 20% of the outstanding capital stock of SMC consisting of 27,198,545 shares[4] known as the **"Cojuangco, *et al*. Block"** registered in the names of respondents.

Disputed in the present petitions are the **sequestration** by the Republic through the Presidential Commission on Good Government (PCGG) and **ownership** of the "Cojuangco *et al*. Block" of SMC shares (hereafter referred to as subject SMC shares).

In *précis*, the Republic or the plaintiff claims, *inter alia*, that Cojuangco, a close associate of President Ferdinand Marcos, acquired the subject SMC shares by unlawfully using the coconut levy funds during the Marcos regime in *betrayal of public trust*

Civil Case No. 0033-E	Unlawful Disbursement and Dissipation of Coco Levy Funds
Civil Case No. 0033-F	**Acquisition of San Miguel Corporation**
Civil Case No. 0033-G	Acquisition of Pepsi Cola
Civil Case No. 0033-H	Behest Loans and Contracts.

[3] Referring to the defendants Soriano Shares, Inc., Roxas Shares, Inc., Arc Investors, Inc., Fernandez Holdings, Inc., Toda Holdings, Inc., ASC Investors, Inc., Randy Allied Ventures, Inc., AP Holdings, Inc., SMC Officers Corps, Inc., Te Deum Resources, Inc., Anglo Ventures, Inc., Rock Steel Resources, Inc., Valhalla Properties, Ltd., Inc., and First Meridian Development, Inc.

[4] At the time of sequestration, *infra* note 61.

Supreme Court E-Library

and *with brazen abuse of power*. The Republic, through the PCGG, thus seeks to recover these subject SMC shares which it considers to be ill-gotten wealth "acquired and accumulated in flagrant breach of trust and of [Cojuangco *et al*.'s] fiduciary obligations as public officers, with grave abuse of right and power and in brazen violation of the Constitution and laws."[5]

The pertinent facts common to the three petitions and the proffered issues pertaining to each are set forth below.

Following the subdivision of Civil Case No. 0033, the Republic filed a "Third Amended Complaint (Subdivided) [Re: Acquisition of San Miguel Corporation (SMC)]"[6] dated May 12, 1995, docketed as Civil Case No. 0033-F, which the Sandiganbayan admitted along with the other subdivided complaints on March 24, 1999.

Respondents filed various motions to resolve the issue of the validity of the writs of sequestration on grounds other than that the corporate respondents were not impleaded as defendants in the corresponding judicial action, which ground was resolved by this Court in G.R. No. 96073.[7] On March 5, 1999, respondents filed another reiterative motion to assert that the writs of sequestration issued by the PCGG – including nine writs, namely Writ Nos. 86-0042, 86-0062, 86-0069, 86-0085, 86-0095, 86-0096, 86-0097, 86-0098 and 87-0218 covering the subject SMC shares[8] — were unauthorized and never became effective.

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[5] *Rollo* (G.R. No. 166859), p. 66.

[6] *Id.* at 64-92.

[7] *Republic v. Sandiganbayan (First Division)*, 310 Phil. 401 (1995); *vide* Resolution of August 6, 1996.

[8] *Vide rollo* (G.R. No. 169203), pp. 306-316. The nine writs of sequestration are summarized as follows:

Writ No.	Property Covered	DateIssued	Issued By
1. 86-0042	Shares of stock in San Miguel Corporation registered in the names of:	April 8, 1986	Commissioner Mary Concepcion Bautista

Supreme Court E-Library

Cojuangco and his co-respondent Cojuangco companies

	a. Meadow Lark Plantations, Inc. b. Silver Leaf Plantations, Inc. c. Primavera Farms, Inc. d. Pastoral Farms, Inc. e. Black Stallion Ranch, Inc. f. Misty Mountains Agricultural Corp. g. Archipelago Realty Corp. h. Agricultural Consultancy Services, Inc. i. Southern Star Cattle Corp. j. LHL Cattle Corp. k. Rancho Grande, Inc. l. Dream Pastures, Inc. m. Far East Ranch, Inc. n. Echo Ranch, Inc. o. Land Air International Marketing Corp. p. Reddee Developers, Inc. q. PCY Oil Manufacturing Corp. r. Lucena Oil Factory, Inc. s. Metroplex Commodities, Inc. t. Vesta Agricultural Corp. u. Verdant Plantations, Inc. v. Kaunlaran Agricultural Corp.		
2. 86-0062	Insofar as it refers to shares of stock in San Miguel Corporation Registered in the names of: a. ECJ & Sons Agricultural Enterprises, Inc. b. Radyo Pilipino Corp. c. Metroplex Commodities, Inc.	April 21, 1986	Commissioner Ramon A. Diaz
3. 86-0069	Shares of stock in San Miguel Corporation registered in the names of: a. Discovery Realty Corporation b. First United Transport, Inc. c. Radyo Pilipino Corporation d. Radio Audience Developers Integrated Organization, Inc. e. Archipelago Finance and Leasing Corp. f. San Esteban Development Corp. g. Christensen Plantation Co. h. Northern Carriers Corp.	April 22, 1986	Commissioner Ramon A. Diaz
4. 86-0085	Insofar as it refers to San Miguel Corporation shares registered in the name of Venture Securities, Inc.	May 9, 1986	Commissioner Ramon A. Diaz
5. 86-0095	Shares of stock in San Miguel Corporation registered in the name of Balete Ranch, Inc.	May 16, 1986	Commissioner Ramon A. Diaz

Supreme Court E-Library

thereafter filed their respective Answers[9] of June 23, 1999 and June 28, 1999, and a joint Pre-Trial Brief[10] of February 11, 2000. The other defendants[11] in Civil Case No. 0033-F also filed their separate Answers and Pre-Trial Briefs. The Republic submitted its Pre-Trial Brief of May 9, 2000.

Several parties moved to intervene. By Orders of May 24, 2000, the Sandiganbayan allowed the intervention of the Philippine Coconut Producers Federation, Inc. (Cocofed) and certain individuals, and denied the intervention of Gabay Foundation, Inc. By Resolution of May 6, 2004, the Sandiganbayan denied SMC's motion for intervention.

After the pre-trial was deemed terminated on May 24, 2000[12] and before the case could be set for trial, the Republic filed on July 25, 2002 a "Motion for Judgment on the Pleadings and/or for Partial Summary Judgment [Re: Defendants CIIF Companies,[13] 14 Holding Companies and COCOFED, *et al.*]." With respect

6. 86-0096	Shares of stock in San Miguel Corporation registered in the name of Oro Verde Services, Inc.	May 16, 1986	Commissioner Ramon A. Diaz
7. 86-0097	Shares of stock in San Miguel Corporation registered in the name of Eduardo M. Cojuangco, Jr.	May 16, 1986	Commissioner Ramon A. Diaz
8. 86-0098	Shares of stock in San Miguel Corporation registered in the name of Kalawakan Resorts, Inc.	May 16, 1986	Commissioner Ramon A. Diaz
9. 87-0218	Insofar as it refers to shares of stock in San Miguel Corporation registered in the name of Balete Ranch, Inc.	May 27, 1987	Commissioners Ramon E. Rodrigo and Quintin S. Doromal

[9] *Rollo* (G.R. No. 166859), pp. 93-112, 113-127.

[10] *Id.* at 128-143.

[11] Juan Ponce Enrile, Danilo Ursua, and the 14 Holding Companies and the CIIF Companies/Oil Mills (Southern Luzon Coconut Oil Mills, Cagayan de Oro Oil Co., Inc, Iligan Coconut Industries, Inc., San Pablo Manufacturing Corp., Granexport Manufacturing Corp., and Legaspi Oil Co., Inc.).

[12] *Rollo* (G.R. No. 169203), pp. 320-323.

[13] Also referred to as "CIIF Oil Mills."

Supreme Court E-Library

to this CIIF block of SMC shares, the Sandiganbayan granted the motion, by Partial Summary Judgment[14] of May 7, 2004, as modified by Resolution of May 11, 2007.

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[14] *Rollo* (G.R. No. 169203), pp. 1030-1093; the dispositive portion of which, as modified, reads:

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. ASC 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.

AND THE CIIF BLOCK OF SAN MIGUEL CORPORATION (SMC) SHARES OF STOCK TOTALLING 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 IN TRUST FOR ALL THE COCONUT FARMERS AND ORDERED RECONVEYED TO THE GOVERNMENT.

The aforementioned Partial Summary Judgment is now deemed a separate appealable judgment which finally disposes of the ownership of the CIIF Block of SMC Shares, without prejudice to the continuation of proceedings with respect to the remaining claims particularly those pertaining to the Cojuangco, *et al*. block of SMC shares.

SO ORDERED.

Supreme Court E-Library

On July 11, 2003, the Republic filed a "Motion for Partial Summary Judgment [Re: Shares in San Miguel Corporation Registered in the Respective Names of Defendant Eduardo M. Cojuangco, Jr. and the Defendant Cojuangco Companies]"[15] upon the thesis that the Sandiganbayan could already render a valid judgment on the basis of undisputed facts appearing on the record.

Meanwhile, by Resolution of October 8, 2003,[16] the Sandiganbayan "declared automatically lifted" the earlier enumerated nine writs of sequestration covering the subject SMC shares "for being null and void" and ordered the annotation of **four conditions**[17] on the relevant corporate books of SMC.

In nullifying the nine writs, the Sandiganbayan found that Writ Nos. 86-0062, 86-0069, 86-0085, 86-0095, 86-0096, 86-0097 and 86-0098 violated the rule that writs of sequestration

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[15] *Rollo* (G.R. No. 166859), pp. 144-186.

[16] The Resolution, albeit dated September 17, 2003, was promulgated on October 8, 2003 by the Sandiganbayan, the First Division of which was composed of Justices Teresita Leonardo-De Castro, Diosdado Peralta (*ponente*), Gregory Ong, Godofredo Legaspi, and Francisco Villaruz, Jr. [*rollo* (G.R. No. 169203), pp. 40-55].

[17] *Rollo* (G.R. No. 169203), p. 54. Ordered to be annotated are the following conditions:

(1) any sale, pledge, mortgage or other disposition of any of the shares of the Defendants Eduardo Cojuangco, *et al*. shall be subject to the outcome of this case;

(2) the Republic through the PCGG shall be given twenty (20) days written notice by Defendants Eduardo Cojuangco, *et al*. prior to any sale, pledge, mortgage or other disposition of the shares;

(3) in the event of sale, mortgage or other disposition of the shares, by the Defendants Eduardo Cojuangco, *et al*., the consideration therefor, whether in cash or in kind, shall be placed in escrow with Land Bank of the Philippines, subject to disposition only upon further orders of this Court; and

(4) any cash dividends that are declared on the shares shall be placed in escrow with the Land Bank of the Philippines, subject to disposition only upon further orders of this Court. If in case stock dividends are declared, the conditions on the sale, pledge, mortgage and other disposition of any of the shares as above-mentioned in conditions 1, 2, and 3, shall likewise apply.

Supreme Court E-Library

should be issued by at least two PCGG commissioners, while the first writ — Writ No. 86-0042 — which was issued prior to the promulgation of the two-commissioner rule and the last writ — Writ No. 87-0218 — were nonetheless lifted since the records failed to show that there was prior determination of a *prima facie* factual basis for the sequestration.

Acting on the Republic's Motion for Reconsideration of the Resolution of October 8, 2003 and on respondents' Motion for Modification of the same Resolution, the Sandiganbayan, by Resolution of June 24, 2005,[18] upheld the lifting of the nine writs of sequestration and deleted, for being unnecessary, the last two of the four conditions it imposed, drawing the Republic to challenge on *certiorari* before this Court in **G.R. No. 169203** the two Resolutions (Resolution of October 8, 2003 and Resolution of June 24, 2005) of the Sandiganbayan to which it attributes the commission of grave abuse of discretion in:

I.

. . . LIFTING WRIT OF SEQUESTRATION NOS. 86-0042 AND 87-0218 DESPITE THE EXISTENCE OF THE BASIC REQUISITES FOR THE VALIDITY OF SEQUESTRATION[;]

II.

. . . [DENYING] PETITIONER'S ALTERNATIVE PRAYER IN ITS MOTION FOR RECONSIDERATION FOR THE ISSUANCE OF AN ORDER OF SEQUESTRATION AGAINST ALL THE SUBJECT SHARES OF STOCK IN ACCORDANCE WITH THE RULING IN *REPUBLIC V. SANDIGANBAYAN*, 258 SCRA 685 (1996)[;]

III.

. . . SUBSEQUENTLY DELETING THE LAST TWO (2) CONDITIONS WHICH IT EARLIER IMPOSED ON THE SUBJECT SHARES OF STOCK.[19] (underscoring in the original)

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[18] *Id.* at 74-82.

[19] *Id.* at 11.

Supreme Court E-Library

In the meantime, the Sandiganbayan, upon Cojuangco's and the Cojuangco companies' motion, authorized with a *caveat*[20] the sale of the subject SMC shares to the SMC Retirement Plan, the proceeds[21] of which were applied to their outstanding loan obligations to the United Coconut Planters Bank (UCPB).

Eventually, the Sandiganbayan, by Resolution of December 10, 2004, denied the Republic's motion for partial summary judgment after finding the existence of genuine factual issues. The Republic thereupon challenged this Resolution via petition for *certiorari* in **G.R. No. 166859**, imputing grave abuse of discretion on the part of the Sandiganbayan, particularly in:

(A)

. . . HOLDING THAT THE "VARIOUS SOURCES" OF FUNDS USED IN ACQUIRING THE SUBJECT SMC SHARES OF STOCK REMAIN DISPUTED[;]

(B)

. . . IN HOLDING THAT IT IS "DISPUTED" WHETHER OR NOT COJUANGCO, JR. HAD INDEED SERVED IN THE GOVERNING BODIES OF PCA, UCPB, AND/OR CIIF OIL MILLS[; AND]

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[20] The Sandiganbayan resolved: "This notwithstanding however, while the Court exempts the sale from the express condition that it shall be subject to the outcome of the case, defendants Cojuangco, *et al*. may well be reminded that despite the deletion of the said condition, they cannot transfer to any buyer any interest higher than what they have. No one can transfer a right to another greater than what he himself has. Hence, in the event that the Republic prevails in the instant case, defendants Cojuangco, *et al*. hold themselves liable to their tranferees-buyers, especially if they are buyers in good faith and for value. In such eventuality, defendants Cojuangco *et al*. cannot be shielded by the cloak of principle of *caveat emptor* because "case law has it that this rule only requires the purchaser to exercise such care and attention as is usually exercised by ordinarily prudent man in like business affairs, and only applies to defects which are open and patent to the service of one exercising such care." [Sandiganbayan Decision of November 28, 2007, p. 34, citing Records, Vol. 18, pp. 181-195].

[21] In the amount of "four billion, three hundred eighty six million, one hundred seven thousand, four hundred twenty-eight pesos and thirty four centavos (Php4,786,107,428.34)"(*sic*) [Sandiganbayan Decision of November 28, 2007, p. 35, citing Manifestation filed on August 7, 2007 (Records, Vol. 19)].

Supreme Court E-Library

(C)

. . . IN NOT FINDING THAT COJUANGCO, JR. TOOK ADVANTAGE OF HIS POSITION AND VIOLATED HIS FIDUCIARY OBLIGATIONS IN ACQUIRING THE SUBJECT SMC SHARES OF STOCK.[22]

By the Republic's claim, trial had become unnecessary in view of the admissions made by respondents in their pleadings (*i.e.*, their respective Answers and their Pre-Trial Brief) which suffice for the rendition of a valid judgment.

During the pendency of the two petitions earlier filed with this Court, the Sandiganbayan, upon respondents' motion, set the case for trial on August 8, 10, 11, 2006.

Consistent with its earlier position that trial had become unnecessary, the Republic did not present further evidence and instead submitted an August 28, 2006 "Manifestation of Purposes" that served as its offer of evidence. After the admission of the Republic's documentary evidence on September 18, 2006,[23] respondents, who found no need to present controverting evidence, filed on November 24, 2006 a "Submission and Offer of Evidence of Defendants." Following the admission of respondents' documentary evidence, the parties submitted their respective Memoranda[24] and Reply-Memoranda.[25]

By Decision of November 28, 2007,[26] the Sandiganbayan dismissed the Third Amended Complaint in subdivided Civil Case No. 0033-F for failure of the Republic to prove by preponderance of evidence its causes of action against the defendants. Thus the Sandiganbayan disposed:

WHEREFORE, in view of all the foregoing, the Court is constrained to DISMISS, as it hereby DISMISSES, the Third Amended

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[22] *Rollo* (G.R. No. 166859), pp. 20-21.

[23] *Rollo* (G.R. No. 180702), Vol. III, pp. 883-884.

[24] *Id.* at 885-1059.

[25] *Id.* at 1127-1214.

[26] Penned by Justice Diosdado M. Peralta, with Justices Teresita Leonardo-De Castro and Efren N. De la Cruz, concurring.

Supreme Court E-Library

Complaint in subdivided Civil Case No. 0033-F **for failure of plaintiff to prove by preponderance of evidence its causes of action against defendants** with respect to the twenty percent (20%) outstanding shares of stock of San Miguel Corporation registered in defendants' names, denominated herein as the "Cojuangco, *et al.* block" of SMC shares. For lack of satisfactory warrant, the counterclaims in defendants' Answers are likewise ordered dismissed.

SO ORDERED.[27] (emphasis and underscoring supplied)

Hence, the Republic's appeal in **G.R. No. 180702** upon the following issues:

I

WHETHER THE HONORABLE SANDIGANBAYAN COMMITTED A REVERSIBLE ERROR WHEN IT DISMISSED CIVIL CASE NO. 0033-F; AND;

II

WHETHER OR NOT THE SUBJECT SHARES IN SMC, WHICH WERE ACQUIRED BY, AND ARE IN THE RESPECTIVE NAMES OF RESPONDENTS COJUANGCO, JR. AND THE COJUANGCO COMPANIES, SHOULD BE RECONVEYED TO THE REPUBLIC OF THE PHILIPPINES FOR HAVING BEEN ACQUIRED USING COCONUT LEVY FUNDS.[28] (emphasis and underscoring supplied)

Certain individuals and organizations jointly filed before this Court a petition-in-intervention.[29] From among them, only petitioner-intervenors Jovito Salonga, Wigberto Tañada, Oscar Santos, Pambansang Kilusan Ng Mga Samahan Ng Magsasaka (PAKISAMA) represented by Vicente Fabe, Surigao Del Sur Federation of Agricultural Cooperatives (SUFAC), and Moro Farmers Association of Zamboanga Del Sur (MOFAZS), the

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[27] *Rollo* (G.R. No. 180702), Vol. I, p. 130.

[28] *Rollo* (G.R. No. 180702), Vol. II, pp. 421-422.

[29] *Rollo* (G.R. No. 180702), Vol. 1, pp. 18-62. Petitioner-intervenors also repleaded and adopted in G.R. No. 169203 the allegations in their petition in G.R. No. 180702. [*rollo* (G.R. No. 169203), pp. 449-460].

Supreme Court E-Library

last two represented by Romeo Royandoyan, were allowed to intervene by Resolution of March 25, 2008.[30]

In challenging the Sandiganbayan Decision of November 28, 2007, petitioner-intervenors proffer that the Sandiganbayan gravely erred and decided the case in violation of law and applicable rulings in

I

. . . RULING THAT, WHILE ADMITTEDLY THE SUBJECT SMC SHARES WERE PURCHASED FROM LOAN PROCEEDS FROM UCPB AND ADVANCES FROM THE CIIF OIL MILLS, SAID SUBJECT SMC SHARES ARE NOT PUBLIC PROPERTY[; AND]

II

. . . IN FAILING TO RULE THAT, EVEN ASSUMING FOR THE SAKE OF ARGUMENT THAT LOAN PROCEEDS FROM UCPB ARE NOT PUBLIC FUNDS, STILL, SINCE RESPONDENT COJUANGCO, IN THE PURCHASE OF THE SUBJECT SMC SHARES FROM SUCH LOAN PROCEEDS, VIOLATED HIS FIDUCIARY DUTIES AND TOOK A COMMERCIAL OPPORTUNITY THAT RIGHTFULLY BELONGED TO UCPB (A PUBLIC CORPORATION), THE SUBJECT SMC SHARES SHOULD REVERT BACK TO THE GOVERNMENT.[31] (underscoring supplied)

I shall discuss G.R. No. 169203, before jointly tackling G.R. No. 166859 and G.R. No. 180702 which involve an interlacing issue.

RULING IN G.R. NO. 169203

The issuance by the Sandiganbayan of its assailed Decision in G.R. No. 180702 notwithstanding, I proceed to tackle the issues bearing on the issuance of the writs of sequestration in view of the significant and novel issues raised in G.R. No. 169203.

Section 3 of the PCGG Rules and Regulations promulgated on April 11, 1986 reads:

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[30] *Rollo* (G.R. No. 180702), Vol. V, unpaginated.

[31] *Rollo* (G.R. No. 180702), Vol. I, p. 34.

Sec. 3. *Who may issue*. A writ of sequestration or a freeze or hold order may be issued by the Commission **upon the authority of at least two Commissioners**, based on the affirmation or complaint of an interested party or *motu proprio* when the Commission has reasonable grounds to believe that the issuance thereof is warranted. (emphasis supplied)

Respecting the lifting of the seven writs, the Sandiganbayan committed no grave abuse of discretion as their issuance violated the immediately-quoted provision of Section 3 of the PCGG Rules and Regulations. Indeed, the Sandiganbayan merely adhered to this Court's 1998 ruling in *Republic v. Sandiganbayan*[32] which construed Section 3 to mean that the authority given by two commissioners for the issuance of a sequestration, freeze or hold order should be evident in the order itself.

The construction advanced by petitioner creates rather than clears ambiguity. The fair and sensible interpretation of the PCGG Rule in question is that the authority given by two commissioners for the issuance of a sequestration, freeze or hold order should be evident in the order itself. Simply stated, **the writ must bear the signatures of two commissioners, because their signatures are the best evidence of their approval thereof.** Otherwise, the validity of such order will be open to question and the very evil sought to be avoided— the use of spurious or fictitious sequestration orders— will persist. The corporation or entity against which such writ is directed will not be able to visually determine its validity, unless the required signatures of at least two commissioners authorizing its issuance appear on the very document itself. **The issuance of sequestration orders requires the existence of a *prima facie* case. The two-commissioner rule is obviously intended to assure a collegial determination of such fact.** In this light, a writ bearing only one signature is an obvious transgression of the PCGG Rules.

Inasmuch as sequestration tends to impede or limit the exercise of proprietary rights by private citizens, it **should be construed strictly against the state**, pursuant to the legal maxim that statutes in derogation of common rights are in general strictly

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[32] G.R. No. 119292, July 31, 1998, 293 SCRA 440.

Supreme Court E-Library

construed and rigidly confined to cases clearly within their scope and purpose. x x x[33] (emphasis supplied)

The Republic, in fact, impliedly concedes that the seven writs of sequestration were tainted with violations of the two-commissioner rule.

With respect to the lifting of the two other writs, Writ Nos. 86-0042 and 87-0218 which, albeit did not violate the two-commissioner rule,[34] were lifted for lack of *prima facie* basis for their issuance, that involves a *factual* issue. It is settled that the Court does not resolve a question of fact, which exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.[35]

IN ANY EVENT, I find no grave abuse of discretion on the part of the Sandiganbayan in arriving at its finding that the issuance of the two writs lacks *prima facie* factual foundation that the properties covered thereby are ill-gotten wealth. For, for the issuance of a writ of sequestration to be valid, it must not only be shown that it was authorized by the PCGG and was signed by at least two commissioners; it must also be shown that there is a *prima facie* showing that the property subject thereof sequestered was ill-gotten wealth.[36]

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[33] *Republic v. Sandiganbayan, id.* at 454-456.

[34] Writ No. 87-0218, it may be recalled, was actually signed by two PCGG commissioners, while Writ No. 86-0042 was issued before the subject rules took effect; *vide YKR Corporation v. Sandiganbayan*, G.R. No. 162079, March 18, 2010, and *Republic of the Philippines v. Sandiganbayan*, 336 Phil. 304, 318-319 (1997) on the non-retroactivity of the PCGG rules.

[35] *Republic v. Sandiganbayan*, G.R. No. 135789, January 31, 2002, 375 SCRA 425, 429.

[36] *Vide Presidential Commission on Good Government v. Tan*, G.R. Nos. 173553-56, December 7, 2007, 539 SCRA 464, wherein the Court examined and evaluated the order of sequestration and the minutes of the meeting.

Supreme Court E-Library

The absence of a prior determination by the PCGG of a *prima facie* basis for the sequestration order is, unavoidably, a fatal defect to render the sequestration of a corporation and its properties void *ab initio*.[37] That there are allegations in the subsequently filed complaint indicative of ill-gotten wealth does not prove *per se* that an actual deliberation or consideration of evidence was *priorly* made to arrive at the required quantum of proof for the issuance of the sequestration orders. As found by the Sandiganbayan, the records of the PCGG were either utterly silent or entirely insufficient on its compliance with this requirement. There were no minutes of any meeting leading to the issuance of Writ No. 86-0042 which was signed "for the commission" by Commissioner Mary Concepcion Bautista on April 8, 1986. As for Writ No. 87-0218 which was issued on May 27, 1987, the only relevant document presented relates to the minutes of the May 26, 1987 meeting which reads:

> The Commission approved the recommendation of Dir. Cruz to sequester all the shares of stock, assets, records, and documents of Balete Ranch, Inc. and the appointment of the Fiscal Committee with ECI Challenge, Inc. / Pepsi-Cola for Balete Ranch, Inc. and the Aquacor Marketing Corp. vice Atty. S. Occena. The objective is to consolidate the Fiscal Committee activities covering three associated entities of Mr. Eduardo Cojuangco. Upon recommendation of Comm. Rodrigo, the reconstitution of the Board of Directors of the three companies was deferred for further study.[38]

The dearth of any record from which a deliberation or derivation of a *prima facie* finding could be established renders nugatory the "*opportunity to contest*" afforded to a person whose property is sequestered.

While it has been held in *Bataan Shipyard & Engineering Co, Inc*. that orders of sequestration may issue *ex parte*¸ it was emphasized that a *prima facie* factual foundation that the properties sequestered are "ill-gotten wealth" is required, and that the person whose property

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[37] *Republic v. Sandiganbayan*, G.R. No. 88126, July 12, 1996, 258 SCRA 685.

[38] *Rollo* (G.R. No. 169203), p. 50.

Supreme Court E-Library

is sequestered **has the opportunity to contest the validity of sequestration** pursuant to Sections 5 and 6 of the Rules and Regulations of PCGG itself. Indeed, that "opportunity to contest" includes resort to the courts. The "opportunity to contest" will be meaningless **unless there is a record, on the basis of which the reviewing authority, including the court, may determine whether the PCGG's ruling that the property sequestered is "ill-gotten wealth" was issued "with grave abuse of discretion amounting to lack or excess of jurisdiction**." That record should include the reason why the shares of stock are being sequestered and the record of the proceedings, on the basis of which, issuance of the order of sequestration was authorized. Those records do not exist here.[39] (emphasis in the original)

While certain statements in the 1995 case of *Republic v. Sandiganbayan*— [40] which likewise involved Sandiganbayan

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[39] *Presidential Commission on Good Government v. Tan*, *supra* note 36 at 483-484.

[40] *Republic v. Sandiganbayan*, *supra* note 7 at 494-495:

VIII. Indications that Some Corporations Are In Fact Mere "Dummies"

To be sure, the records of these cases abound with indications, mostly in the form of admissions, that several of the corporations listed in the complaint against Eduardo J. Cojuangco, Jr. are "dummies" or manipulated instruments, or repositories of wealth deceitfully amassed at the expense of the People, or simply the fruits thereof.

A. Dummy Owners of San Miguel Corporation (SMC) Stock

For instance three (3) corporations, namely: (1) Meadow-Lark Plantations, Inc., (2) Primavera Farms, Inc., and (3) Silver-Leaf Plantations, Inc., appear in the books of San Miguel Corporation (SMC) as owners of 8,138,440 shares of the latter's stock. And a certain Jose C. Concepcion also appears in its books as owner of "San Miguel Corporation Stock Certificate No. A962930 for 5,000 shares."

All the outstanding capital stock (100%) of these three (3) companies is owned by five (5) persons, all lawyers, namely: (1) the aforenamed Jose C. Concepcion, (2) Victoria C. de los Reyes, (3) Florentino M. Herrera III, (4) Teresita J. Herbosa, and (5) Jose Riodil Montebon. Concepcion, Herbosa and Montebon are members of one law firm; Herrera and de los Reyes are members of another.

All these (5) are shown to be signatories of three (3) identically worded voting trust agreements executed on April 13, 1984 giving to Eduardo M. Cojuangco, Jr. the right to vote for a period of five (5)

Supreme Court E-Library

Civil Case No. 0033— could be construed to mean that this Court therein ruled that the subject SMC shares are *prima facie* ill-gotten, those statements must be taken in their proper context. The issue in that case was not whether there was a *prima facie* case that the subject SMC shares, *inter alia*, were ill-gotten to warrant the issuance of sequestration orders. The issue was, as therein stated:

DOES INCLUSION IN THE COMPLAINT FILED BY THE PCGG BEFORE THE SANDIGANBAYAN OF SPECIFIC ALLEGATIONS OF CORPORATIONS BEING "DUMMIES" OR UNDER THE CONTROL OF ONE OR ANOTHER OF THE DEFENDANTS NAMED

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years, the shares of stock of the three (3) corporations above mentioned — of the entire capital stock of which they are, as aforestated, the ostensible owners.

Moreover, there are on record more or less identically worded affidavits of Jose C. Concepcion, Teresita J. Herbosa and Jose R.D. Montebon frankly confessing that the shares of stock listed under their names in the corporate books of the three (3) corporations above mentioned — and several other firms shortly to be named — were merely assigned to them as "nominee stockholders," but in truth they do "not have any proprietary interest in any of . . . (said) shares of stock."

Concepcion's affidavit contains the additional declaration of his being "nominee stockholder" of "San Miguel Corporation Stock Certificate No. A962930 for 5,000 shares and all stock dividends declared thereon," *supra*, although in truth he does "not have any proprietary interest" therein.

It thus appears that by their own unequivocal admissions, not one of the aforementioned five attorneys is the owner of the stock under their names in the three (3) corporations above mentioned, which in turn own not inconsiderable stock in San Miguel Corporation.

Jose C. Concepcion appears further more to have executed in blank three (3) documents entitled "DECLARATION OF TRUST AND ASSIGNMENT OF SUBSCRIPTION," all dated April 13, 1984, in each of which he (a) declares that all shares of stock registered in his name in the three corporations above named (Meadow-Lark Plantations, Inc., Primavera Farms, Inc., and Siver-Leaf Plantations, Inc.) were assigned to him "only as nominee and only for the benefit and in trust for" an assignee whom he does not name, and (b) binds himself "to assign, transfer and convey all his rights, title and interest in the aforesaid shares of stock in favor of the (unnamed) ASSIGNEE or his nominees or assigns at anytime upon the request of the ASSIGNEE."

Supreme Court E-Library

THEREIN AND USED AS INSTRUMENTS FOR ACQUISITION, OR AS BEING DEPOSITARIES OR PRODUCTS, OF ILL-GOTTEN WEALTH; OR THE ANNEXING TO SAID COMPLAINTS OF A LIST OF SAID FIRMS, BUT WITHOUT ACTUALLY IMPLEADING THEM AS DEFENDANTS, SATISFY THE CONSTITUTIONAL REQUIREMENT THAT IN ORDER TO MAINTAIN A SEIZURE EFFECTED IN ACCORDANCE WITH EXECUTIVE ORDER NO. 1, s. 1986, THE CORRESPONDING "JUDICIAL ACTION OR PROCEEDING" SHOULD BE FILED WITHIN THE SIX-MONTH PERIOD PRESCRIBED IN SECTION 26, ARTICLE XVIII, OF THE (1987) CONSTITUTION? (underscoring supplied)

That this Court in the immediately-cited 1995 *Republic v. Sandiganbayan* case left unresolved the issue of whether there was *prima facie* factual basis for the issuance of the sequestration orders of subject SMC shares is plain from its Resolution of August 6, 1996 disposing of the PCGG's motions for reconsideration, *viz.*:

> The Court deliberated x x x and thereafter Resolved to DENY both motions for lack of merit. **The Court has made known its mandate that the ultimate factual issue of who are the legitimate, *bona fide* owners of the sequestered assets be resolved by the Sandiganbayan with all reasonable dispatch, as well as all other related and incidental questions, such as whether there is *prima facie* factual foundation for the sequestration of said assets or for apprehension of dissipation, loss or wastage in the event the sequestered shares of stock are in the interim voted by their registered holders.** It is the Sandiganbayan which must now be acknowledged to have discretion and authority to determine the precise issues which **still have to be, or need no longer be**, passed upon and adjudicated in light of the relevant dispositions of this Court, the evidence already before the Sandiganbayan, and whatever comments, observations, suggestions and proposals may be submitted by the parties — these being details which this Court need not and will not attend to.[41] (emphasis and underscoring supplied)

Clearly, this Court in the same case did not touch upon the validity of the writs of sequestration on grounds other than the non-impleading of the corporate respondents as defendants in

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[41] *Republic v. Sandiganbayan, supra* note 7.

Supreme Court E-Library

the corresponding judicial action instituted within six months after the ratification of the 1987 Constitution, as required under Section 26, Article XVIII thereof. In fact, the corporate respondents withdrew the assertion of lack of *prima facie* factual basis as a ground in assailing the issuance of sequestration orders and limited their petition on just one ground.[42] On whether the objection of lack of *prima facie* factual basis could still be validly entertained, despite the omnibus motion rule,[43] I need not belabor this issue, especially since none of the parties raised or considered this point.

The Republic goes on to fault the Sandiganbayan for denying its alternative prayer in its motion for reconsideration — for the issuance by the Sandiganbayan of an order of sequestration against the subject SMC shares in accordance with this Court's decision in the 1996 case of *Republic v. Sandiganbayan*,[44] the pertinent portion of which reads:

> x x x In brief, the matter of the legality and propriety of the sequestration of respondent corporation became but an incident in said Civil Case No. 0010 and thus *subject exclusively to judicial adjudication by the respondent Court*. We thus uphold the ruling of respondent Court on this issue:
>
> > x x x (c) While Freeze Orders and writs of sequestration may continue to be issued within eighteen (18) months from February 2, 1987, this could obviously refer only to matters which have not yet been subject of litigation initiated by the Republic (*i.e.*, the PCGG); because
> >
> > (d) Once suit has been initiated on a particular subject, the entire issue of the alleged ill-gotten wealth— the acts or omissions of a particular defendant or set of defendants— will have become subject exclusively to judicial adjudication. The

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[42] The Sandiganbayan, by Resolution of April 8, 1992, granted corporate respondents' motion to withdraw the ground of lack of *prima facie* showing. [*vide* private respondents' Comment (in G.R. No. 180702) of May 7, 2008 on its Annex "G", pp. 4-6].

[43] RULES OF COURT, Rule 15, Sec. 8.

[44] *Supra* note 37.

Supreme Court E-Library

> issue of ill-gotten properties under the causes of action alleged in the Complaints will have been removed from the quasi-judicial level of the PCGG and elevated to the judicial level of the SANDIGANBAYAN, the Court which today maintains exclusive original jurisdiction on these matters;
>
> (e) Writs may thereafter [*i.e.*, after the lapse of eighteen months from February 2, 1987] still issue, of course, and writs already issued may thereafter be certainly quashed, dissolved, set aside or modified; but this time, only by the Courts, whether the Sandiganbayan or the Supreme Court. The power over these assets has become exclusively judicial.[45] (italics in the original)

Nowhere in the immediately-quoted portion of this Court's decision was it mentioned that the Sandiganbayan has the power to issue a writ of sequestration similar to that vested in the PCGG. The quoted portion relates solely to the resolution of the second issue in that case — whether the Sandiganbayan has "jurisdiction over a motion questioning the validity of a 'sequestration order' issued by a duly authorized representative of the PCGG." In ruling in the affirmative, this Court settled that the matter of the *legality* and *propriety* of a sequestration, being an incident of the case, is subject "exclusively to judicial adjudication" by the Sandiganbayan. The Court therein emphatically reiterated that the remedies are always subject to the control of the Sandiganbayan which acts as the arbiter between the PCGG and the claimants. Moreover, the Court, in no uncertain terms, recognized that under no circumstance can a sequestration or freeze order be validly issued by one who is not a Commissioner of the PCGG. The Sandiganbayan's ample power referred to therein to control the proceedings refers to the issuance of ancillary orders or writs of attachment, upon proper application, to effectuate its judgment, but does *not* include the power to seize in the first instance properties purporting to be ill-gotten.[46]

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[45] *Id.* at 697-698.

[46] *Vide Soriano III v. Yuson*, No. 74910, August 10, 1988, 164 SCRA 226 where the Court ruled that the Sandiganbayan's exclusive jurisdiction evidently extends not only to the principal causes of action, *i.e.*, the recovery of ill-gotten wealth, but also to all incidents arising from, incidental to, or related to, such cases, such as the dispute over the sale of the shares, the

Supreme Court E-Library

With regard to the order for the annotation of the four restrictive conditions on the relevant corporate books of the SMC, **despite** the lifting of the writs of sequestration, the Sandiganbayan was bereft of jurisdiction to do so. While it has ample power to make such interlocutory orders as may be necessary to ensure that its judgment would not be rendered ineffective,[47] that is not a license for it to *motu proprio* issue every order it may deem fit.

The intended annotation of the four conditions is akin to a notice of *lis pendens*, which applies only in an action affecting the title or right of possession of *real* property. The case involves *personal* property, however.

> Under the third, fourth and fifth causes of action of the Complaint, there are allegations of breach of trust and confidence and usurpation of business opportunities in conflict with petitioners' fiduciary duties to the corporation, resulting in damage to the Corporation. Under these causes of action, respondents are asking for the delivery to the Corporation of possession of the parcels of land and their corresponding certificates of title. Hence, the suit necessarily affects the title to or right of possession of the real property sought to be reconveyed. **The Rules of Court allows the annotation of a notice of *lis pendens* in actions affecting the title or right of possession of real property**. x x x[48] (italics in the original omitted; underscoring and emphasis supplied)

Even in cases of attachment, both the Revised Rules of Court and Corporation Code do not require annotation on the corporation's stock and transfer books for the attachment of shares of stock to be valid and binding on the corporation and third party.[49]

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propriety of the issuance of ancillary writs or provisional remedies relative thereto, and the sequestration thereof.

[47] *Republic v. Sandiganbayan*, G.R. No. 88228, June 27, 1990, 186 SCRA 864 where the Sandiganbayan, upon motion, placed the cash dividends of a sequestered corporation in *custodia legis* instead of allowing them to remain in the name and under the control of one of the litigants.

[48] *Gochan v. Young*, 406 Phil. 663, 679 (2001).

[49] *Chemphil Export and Import v. CA*, 321 Phil. 619, 645 (1995).

Supreme Court E-Library

If the Republic wanted to be assured that any judgment in its favor would be enforceable, there are available remedies for the purpose. The 1998 *Republic v. Sandiganbayan*[50] case instructs:

> In brief, sequestration is not the be-all and end-all of the efforts of the government to recover unlawfully amassed wealth. The PCGG may still proceed to prove in the main suit who the real owners of these assets are. Besides, as we reasserted in *Republic vs. Sandiganbayan*, **the PCGG may still avail itself of ancillary writs, since "Sandiganbayan's jurisdiction over the sequestration cases demands that it should also have the authority to preserve the subject matter of the cases, the alleged ill-gotten wealth properties** x x x."
>
> **With the use of proper remedies and upon substantial proof, properties in litigation may, when necessary, be placed in *custodia legis* for the complete determination of the controversy or for the effective enforcement of the judgment.** However, for violating the Constitution and its own Rules, the PCGG may no longer exercise dominion and custody over Respondent Corporation and the shares it owns in PTIC. (emphasis and underscoring supplied)

It may be argued that respondents, not having elevated the June 24, 2005 Resolution that denied their Motion for Modification, albeit the Sandiganbayan partially modified its earlier imposition of conditions on the lifting of the nine writs of sequestration, are presumed to be satisfied therewith, hence, no modification of judgment or new affirmative relief can be granted to them at this stage.[51]

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[50] *Supra* note 32 at 468 citing *Republic v. Sandiganbayan*, *supra* note 47 at 872-873.

[51] *Vide Universal Staffing Services, Inc. v. National Labor Relations Commission*, G.R. No. 177576, July 21, 2008, 559 SCRA 221, 231-232: It is a well-settled procedural rule in this jurisdiction, and we see no reason why it should not apply in this case, that an appellee who has not himself appealed cannot obtain from the appellate court any affirmative relief other than those granted in the decision of the court below. The appellee can only advance any argument that he may deem necessary to defeat the appellant's claim or to uphold the decision that is being disputed. He can assign errors on appeal if such is required to strengthen the views expressed by the court *a quo*.

Prudential Bank & Trust Co. v. Reyes,[52] however, distinguishes an ordinary appeal from a special civil action of *certiorari*, insofar as the application of the rule against granting affirmative reliefs to a non-appealing party is involved. On the one hand, it is settled that in ordinary appeals a party who did not appeal cannot seek affirmative relief other than the ones granted in the disputed decision. An appellant can assign as many errors as he may deem to be reversible. On the other hand, resort to a judicial review in a petition for *certiorari* is confined to issues of want or excess of jurisdiction and grave abuse of discretion that go into the validity of the challenged issuance.

In the petition at bar, the deletion by the Sandiganbayan of some of the conditions is intimately related to the corollary retention of the remaining conditions. Otherwise stated, the Court, in determining grave abuse of discretion on the part of the Sandiganbayan in removing, by Resolution of June 24, 2005, two of the four conditions, would necessarily and inescapably have to come to terms with the Sandiganbayan's maintaining the other conditions, which is merely a consequence of the single act of modifying the Resolution of October 8, 2003.

IN SUM, I find that the Sandiganbayan committed no grave abuse of discretion insofar as it lifted the nine writs of sequestration, but it was bereft of jurisdiction in imposing the restrictive conditions. The lifting of the sequestration orders does not *ipso facto* mean that the sequestered properties are not ill-gotten bears reiteration, however. For the effect of the lifting of the sequestration against a corporation or its shares is merely to terminate the role of the government as conservator thereof.[53]

Such assigned errors, in turn, may be considered by the appellate court solely to maintain the appealed decision on other grounds, but not for the purpose of modifying the judgment in the appellee's favor and giving him other affirmative reliefs. (underscoring supplied)

[52] 404 Phil. 961, 979 (2001).

[53] *Vide* *Presidential Commission on Good Government v. Sandiganbayan*, 418 Phil. 8, 20 (2001); *Republic of the Phils. v. Sandiganbayan*, 355 Phil. 181, 206-207 (1998).

Supreme Court E-Library

RULING IN G.R. NOS. 166859 & 180702

As reflected in the proceedings narrated above, the petition in G.R. No. 166859 challenging the Sandiganbayan's denial of the Republic's motion for partial summary judgment has been overtaken by events that culminated in the promulgation by the Sandiganbayan of its Decision of November 28, 2007 which is being assailed in G.R. No. 180702. Records show that the parties were subsequently given the opportunity to present evidence necessary to establish their respective claims or defenses. As noted earlier, however, they opted to forego presenting evidence during the trial.

Respondents raise a procedural objection on the basis of the limitation of the remedy under Rule 45, arguing that the petition for review on *certiorari* in G.R. No. 180702 raises questions of fact, of which this Court cannot take cognizance as it is limited to reviewing errors of law.

The distinction between "questions of law" and "questions of fact" has long been settled. There is a question of law when the doubt or difference arises as to what the law is on certain state of facts, and which does not call for an examination of the probative value of the evidence presented by the parties-litigants. On the other hand, there is a question of fact when the doubt or controversy arises as to the truth or falsity of the alleged facts. Simply put, when there is no dispute as to fact, the question of whether the conclusion drawn therefrom is correct is a question of law.[54] Whether a question is one of law or of fact is not determined by the appellation given to such question by the party raising it; rather, it is whether a court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.[55]

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[54] *Cucueco v. Court of Appeals*, G.R. No. 139278, October 25, 2004, 441 SCRA 290, 298.

[55] *Vide id.* at 299.

Supreme Court E-Library

The resolution of the issues involved in G.R. No. 180702 does not entail a reevaluation of the probative value of documentary evidence or the credibility of witnesses, for none was presented during the trial. The Court needs only to look into the **pleadings** and the **parties' submissions** without necessarily going into the truth or falsity thereof.[56] Any review would only be limited to the inquiry of whether the law was properly applied given the submissions which are part of the record, the fact of filing of which is not contested by the parties.[57] Since the petition assails the correctness of the conclusions drawn by the Sandiganbayan from the set of facts it considered, the question is one of law.[58]

In the joint determination of the two petitions, the linking bone of contention boils down to the *core issue* of **whether, on the basis of the submissions made of record, the subject SMC shares should be reconveyed to the Republic for having been acquired with the use of coconut levy funds.**

It is proper to dissuade any confusion that might be engendered without a clear delineation of the set of proceedings that, on the one hand, transpired up to that point where the motion for summary judgment was resolved, which is the one pertinent to **G.R. No. 166859**, and, on the other hand, the subsequent settings for trial that afforded both the Republic and Cojuangco, *et al.* the opportunity to present evidence until the rendition of the assailed Decision, which is the episode to be considered in **G.R. No. 180702**.

Being mindful of this marked difference in terms of the proceedings conducted is highly important in order to illustrate and recognize situations where, as in this case, **a plaintiff may be denied summary judgment but, if the case proceeds *ceteris***

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[56] *Rivera v. United Laboratories, Inc.*, G.R. No. 155639, April 22, 2009, 586 SCRA 269, 288.

[57] *Vide Cucueco v. Court of Appeals, supra* note 54 at 300.

[58] *Vide Technol Eight Philippines Corp. v. National Labor Relations Commission*, G.R. No. 187605, April 13, 2010, 618 SCRA 248.

Supreme Court E-Library

***paribus*,**[59] **a plaintiff may yet obtain a favorable judgment when the defendant fails to (i) vary or override a judicial admission in instances where it may be allowed, (ii) refute a disputable presumption or *prima facie* pronouncement, or (iii) otherwise go forward with the burden of evidence in proving an affirmative defense or disproving a negative assertion**.

For, in the present case, I find the denial of the motion for summary judgment to be proper only upon the grant to Cojuangco, *et al*. of the benefit of all favorable inferences in viewing the evidence and that any doubt as to the existence of an issue of fact must be resolved against the movant Republic. This afforded Cojuangco, *et al.* the entitlement to defend or go to trial, precisely to demonstrate that their defense is not sham, fictitious or contrived, which "benefit of favorable inference" could not have otherwise been settled through the hearing on the motion for summary judgment.

In its Resolution of December 10, 2004 (assailed in G.R. No. 166859), which was heavily relied upon in its Decision of November 28, 2007 (assailed in G.R. No. 180702), the Sandiganbayan enumerated the following:

UNDISPUTED FACTS

1. Defendant Eduardo M. Cojuangco, Jr. admits that he acquired in 1983 approximately twenty percent (20%) of the outstanding shares of stock of SMC which are registered in his name and in the name of defendant corporations, x x x[60]

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[59] Latin phase which means "with all other factors or things remaining the same." <http://www.thefreedictionary.com/>

[60] The Sandiganbayan enumerates these corporations as follows:

(1) Agricultural Consultancy Services, Inc.
(2) Archipelago Realty Corp.,
(3) Balete Ranch, Inc.,
(4) Black Stallion Ranch, Inc.,
(5) Christensen Plantation Company,
(6) Discovery Realty Corp.,

Supreme Court E-Library

2. Defendant Cojuangco used the proceeds of loans obtained by said defendant from various sources in purchasing the said block of shares;

3. The said block of shares were purchased by defendant Eduardo M. Cojuangco, Jr. from Ayala Corporation, of which Mr. Enrique Zobel was then the Chairman and Chief

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(7) Dream Pastures, Inc.,
(8) Echo Ranch, Inc.,
(9) Far East Ranch, Inc.
(10) Filsov Shipping Company, Inc.,
(11) First United Transport, Inc.,
(12) Habagat Realty Development, Inc.,
(13) Kalawakan Resorts, Inc.,
(14) Kaunlaran Agricultural Corp.,
(15) Labayug Air Terminals, Inc.,
(16) Landair International Marketing Corp.,
(17) LHL Cattle Corporation,
(18) Lucena Oil Factory, Inc.,
(19) Meadow Lark Plantations, Inc.,
(20) Metroplex Commodities, Inc.,
(21) Misty Mountain Agricultural Corp.,
(22) Northeast Contract Traders, Inc.,
(23) Northern Carriers Corporation,
(24) Oceanside Maritime Enterprises, Inc.
(25) Oro Verde Services, Inc.,
(26) Pastoral Farms, Inc.,
(27) PCY Oil Manufacturing Corp.,
(28) Philippine Technologies, Inc.,
(29) Primavera Farms, Inc.,
(30) Punong-Bayan Housing Development Corp.,
(31) Pura Electric Company Inc.,
(32) Radio Audience Developers Integrate Organization, Inc.
(33) Radyo Pilipino Corporation,
(34) Rancho Grande, Inc.,
(35) Reddee Developers, Inc.,
(36) San Esteban Development Corp.,
(37) Silver Leaf Plantations, Inc.,
(38) Southern Service Traders, Inc.,
(39) Southern Star Cattle Corp.,
(40) Spade One Resorts Corp.,
(41) Unexplored Land Developers, Inc.,
(42) Verdant Plantations, Inc.,
(43) Vesta Agricultural Corp. and
(44) Wings Resorts Corporation

Supreme Court E-Library

Executive Officer, and from several other corporations and individuals;

4. The total of 27,198,545 shares of stocks in the SMC at the time of sequestration in 1989, by reason of the declaration of 100% stock dividends and subsequent stock split, has grown to 108,846,948, x x x[61]

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[61] The Sandiganbayan found that these shares were distributed among the defendant corporations as follows:

STOCKHOLDERS	(ORIGINAL) NO. OF SHARES	(PRESENT*) NO. OF SHARES
Primavera Farms, Inc.	5,381,643	21,626,164
Black Stallion Ranch, Inc.	3,587,695	14,360,772
Misty Mountains Agri'l Corp.	3,587,695	14,360,772
Pastoral Farms, Inc.	3,587,695	14,350,772
Meadow Lark Plantation, Inc.	2,690,771	10,763,080
Silver Leaf Plantation, Inc.	2,690,771	10,763,080
Lucena Oil Factory, Inc.	169,174	676,696
PCY Oil Manufacturing Corp.	167,887	671,464
Metroplex Commodities, Inc.	167,777	671,104
Kaunlaran Agricultural Corp.	145,475	581,800
Redee Developers, Inc.	169,071	676,280
Agrl'l Consultancy Serv., Inc.	167,907	671,624
First United Transport, Inc.	168,963	675,848
Verdant Plantations, Inc.	145,475	581,900
Christensen Plantation Co.	169,920	675,680
Northern Carriers Corp.	167,891	671,560
Vesta Agricultural Corp.	145,475	581,900
Ocean Side Maritime Ent. Inc.	132,250	529,000
Pura Electric Company, Inc.	99,587	398,336
Unexplored Land Developers, Inc.	102,823	411,288
Punong-Bayan Housing Dev't. Corp.	132,250	529,000
Habagat Realty Development, Inc.	145,822	593,280
Spade One Resorts Corp.	147,040	588,280
Wings Resorts Corp.	104,886	419,536
Kalawakan Resorts, Inc.	132,250	529,000

Supreme Court E-Library

5. "There are 'indications . . .' that several of the corporations listed in the complaint against Eduardo M. Cojuangco, Jr., are 'dummies' or manipulated instruments, or repositories of wealth deceitfully amassed at the expense of the People or simply fruits thereof." (*Republic v. Sandiganbayan*, 240 SCRA 376 [1995])[62]

In both the Resolution of December 10, 2004 and the Decision of November 28, 2007, the Sandiganbayan consistently pointed out the "disputed facts" by outlining the genuine factual issues, *viz.*:

DISPUTED FACTS

x x x x x x x x x

Labayug Air Terminals, Inc.	159,106	636,416
Landair Int'l. Marketing Corp.	168,965	675,856
San Esteban Dev't Corp.	167,879	670,716
Philippine Technologies, Inc.	132,250	529,000
Balete Ranch, Inc.	166,395	665,576
Discovery Realty Corp.	169,203	676,808
Archipelago Realty Corp.	167,761	671,040
Southern Service Traders, Inc.	120,480	481,916
Oro Verde Services, Inc.	132,250	529,000
Northeast Contract Traders	132,536	538,144
Dream Pastures, Inc.	159,237	676,948
LHL Cattle Corporation	183,216	676,880
Rancho Grande, Inc.	167,614	870,452
Echo Ranch, Inc.	167,897	671,584
Far East Ranch, Inc.	169,227	676,908
Southern Star Cattle Corp.	159,095	676,376
Radio Audience Developers Integrated Org., Inc.	167,787	671,104
Radyo Pilipino Corp.	167,777	671,104
TOTAL	27,198,545	108,846,948

[62] *Rollo* (G.R. No. 180702), Vol. II, pp. 831-833.

Supreme Court E-Library

1) What are the "various sources" of funds, which the defendant Cojuangco and his companies claim they utilized to acquire the disputed SMC shares?

2) Whether or not such funds acquired from alleged "various sources" can be considered coconut levy funds;

3) Whether or not defendant Cojuangco had indeed served in the governing bodies of PCA, UCPB and/or CIIF Oil Mills at the time the funds used to purchase the SMC shares were obtained such that he owed a fiduciary duty to render an account to these entities as well as to the coconut farmers;

4) Whether or not defendant Cojuangco took advantage of his position and/or close ties with then President Marcos to obtain favorable concessions or exemptions from the usual financial requirements from the lending banks and/or coco-levy funded companies, in order to raise the funds to acquire the disputed SMC shares; and if so, what are these favorable concessions or exemptions?[63]

A considered look at the pleadings submitted by the parties is thus imperative.

Pertinent portions of the Third Amended Complaint read:

x x x x x x x x x

4. Defendant EDUARDO M. COJUANGCO, JR., was Governor of Tarlac, Congressman of then First District of Tarlac, and Ambassador-at-Large in the Marcos Administration. He was commissioned Lieutenant Colonel in the Philippine Air Force, Reserve. Defendant Eduardo M. Cojuangco, Jr., otherwise known as the "Coconut King" was head of the coconut monopoly which was instituted by Defendant Ferdinand E. Marcos, by virtue of the Presidential Decrees. Defendant Eduardo E. Cojuangco, Jr., who was also one of the closest associates of the Defendant Ferdinand E. Marcos, held the positions of Director of the Philippine Coconut Authority, the United Coconut Mills, Inc., President and Board Director of the United Coconut Planters Bank, United Coconut Planters Life Assurance Corporation, and United Coconut Chemicals, Inc. He was also the Chairman of the Board and Chief Executive

[63] *Rollo* (G.R. No. 166859), p. 61; (G.R. No. 180702), Vol. II, p. 833.

Supreme Court E-Library

Officer and the controlling stockholder of the San Miguel Corporation. He may be served summons at x x x.

4.a One of the companies beneficially owned or controlled by Defendant Eduardo E. Cojuangco and/or by the individual defendants is/was the San Miguel Corporation (SMC) organized according to Philippine laws.

x x x x x x x x x

14. Defendant Eduardo Cojuangco, Jr. taking undue advantage of his association, influence and connection, acting in unlawful concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, and the individual defendants, embarked upon devices, schemes and stratagems, including the use of defendant corporations as fronts, to unjustly enrich themselves at the expense of Plaintiff and the Filipino people, such as when he — misused coconut levy funds to buy out majority of the outstanding shares of stock of San Miguel Corporation in order to control the largest agri-business, foods and beverage company in the Philippines, more particularly described as follows:

(a) Having control over the coconut levy, Defendant Eduardo M. Cojuangco invested the funds in diverse activities, such as the various businesses SMC was engaged in (*e.g.* large beer, food, packaging, and livestock);

(b) He entered SMC in early 1983 when he bought most of the 20 million shares Enrique Zobel owned in the Company. The shares, worth $49 million, represented 20% of SMC;

x x x x x x x x x

(i) Mr. Eduardo M. Cojuangco, Jr. acquired a total of 16,276,879 shares of San Miguel Corporation from the Ayala group; of said shares, a total of 8,138,440 (broken into 7,128,227 Class A and 1,010,213 Class B shares) were placed in the names of Meadowlark Plantations, Inc. (2,034,610) and Primavera Farms, Inc. (4,069,220). The Articles of Incorporation of these three companies show that Atty. Jose C. Concepcion of ACCRA owns 99.6% of the entire outstanding stock. The same shareholder executed three (3) separate "Declaration of Trust and Assignment of Subscription" in favor of a BLANK assignee pertaining to his shareholdings in Primavera Farms, Inc., Silver Leaf Plantations, Inc. and Meadowlark Plantations, Inc.

Supreme Court E-Library

(j) The same stockholder (Jose C. Concepcion), together with all the four other stockholders in the trhee (sic) named corporations, simultaneously executed Voting Trust Agreements in favor of Mr. Eduardo M. Cojuangco, Jr. over the SMC shares of stock which they acquired. In these trust deeds, Eduardo Cojuangco, Jr. undertook to hold the SMC shares in trust for the beneficial owners, and to turn over with utmost speed the dividends on the shares to the latter.

(k) The other Respondent Corporations are owned by interlocking shareholders who are likewise lawyers in the ACCRA Law Offices and had admitted their status as "nominee stockholders" only.

> (k-1) The Corporations: Agricultural Consultancy Services, Inc., Archipelago Realty Corporation, Balete Ranch, Inc., Discovery Realty Corporation, First United Transport, Inc., Kaunlaran Agricultural Corporation, Land Air International Marketing Corporation, Misty Mountains Agricultural Corporation, Pastoral Farms, Inc., Oro Verde Services, Inc., Radyo Filipino Corporation, Reddee Developers, Inc., Verdant Plantations, Inc. and Vesta Agricultural Corporation, were incorporated by lawyers of ACCRA Law Offices.
>
> (k-2) With respect to PCY Oil Manufacturing Corporation and Metroplex Commodities, Inc., they are controlled respectively by HYCO, Inc. and Ventures Securities, Inc. both of which were incorporated likewise by lawyers of ACCRA Law Offices.
>
> (k-3) The stockholders who appear as incorporators in most of the other Respondent Corporations are also llawyers (sic) of the ACCRA Law Offices, who as early as 1987 had admitted under oath that they were acting only as "nominees stockholders."

(l) These companies, which ACCRA Law Offices organized for Defendant Cojuangco to be able to control more than 60% of SMC shares, were funded by institutions which depended upon the coconut levy such as the UCPB, UNICOM, United Coconut Planters Life Assurance Corp. (COCOLIFE), among others. Cojuangco and his ACCRA lawyers used the funds from 6 large coconut oil mills and 10 copra trading companies to borrow money from the UCPB and purchase these holding companies and the SMC stocks. Cojuangco used $150 million from the coconut levy, broken down as follows:

Supreme Court E-Library

Amount (in million)	Source	Purpose
$22.26	Oil Mills	equity in holding companies
$65.6	Oil Mills	loan to holding companies
$61.2	UCPB	loan to holding companies (164)

The entire amount, therefore, came from the coconut levy, some passing through the Unicom oil mills, others directly from the UCPB.

x x x x x x x x x

(o) Along with Cojuangco, Defendant Enrile and ACCRA also had interests in SMC, broken down as follows:

% of SMC	Owner
Cojuangco	
31.3%	coconut levy money
18%	companies linked to Cojuangco
5.2%	government
5.2%	SMC employee retirement fund
Enrile & ACCRA	
1.8%	Enrile
1.8%	Jaka Investment Corporation
1.8%	ACCRA Investment Corporation[64]

In Cojuangco's Answer to the Third Amended Complaint, he made the following material admissions:

2.01 Herein defendant admits paragraph 4 only insofar as it alleges the following:

(a) That **herein defendant has held the following positions in government**: Governor of Tarlac, Congressman of the then First District of Tarlac, Ambassador-at-Large, Lieutenant Colonel in the Philippine Air Force and **Director of the Philippine Coconut Authority**;

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[64] *Rollo* (G.R. No. 180702), Vol. I, pp. 142, 148-149, 151-155.

Supreme Court E-Library

(b) **That he held the following positions in private corporations**: **Member of the Board of Directors of the United Coconut Oil Mills, Inc**.; **President and member of the Board of Directors of the United Coconut Planters Bank**, United Coconut Planters Life Assurance Corporation, and United Coconut Chemicals, Inc.; **Chairman of the Board and Chief Executive Officer of San Miguel Corporation**; x x x

x x x x x x x x x x x

5.02.b. Herein defendant admits paragraph 14(b) of the complaint insofar as it is alleged therein **that in 1983, he acquired shares of stocks representing approximately 20% of the outstanding capital stock of San Miguel Corporation**; herein defendant specifically denies that the shares of stock in SMC which he purchased belonged to Mr. Enrique Zobel, **the truth being that the said shares of stock were owned by the Ayala Corporation**, of which Mr. Enrique Zobel was then Chairman and Chief Executive Officer, **and several other corporations and individuals**. Herein defendant further denies the allegation, implication and insinuation, whether contained in paragraph 14(b) or in any other portion of the complaint that he acquired the aforesaid interest in San Miguel Corporation with the use of the coconut levy funds, or in any other manner contrary to law, **the truth being that herein defendant acquired the said shares of stock using the proceeds of loans obtained by herein defendant from various sources.**

x x x x x x x x x x x

5.02.i. Herein defendant admits paragraph 14(i) of the complaint insofar as it is alleged therein that **he acquired the San Miguel shares registered in the name of Ayala Corporation** and that **some of said shares were registered in the names of Meadowlark Plantations, Inc. and Primavera Farms, Inc.** Herein defendant further admits that, **at the time of their incorporation, 99.6% of the said shares in said corporations were registered in the name of Atty. Jose C. Concepcion**. Herein defendant likewise admits that **Atty. Jose C. Concepcion executed three (3) separate Declarations of Trust and Assignment of Subscription in favor of an unnamed assignee pertaining to his shares in Primavera Farms, Silver Leaf Plantations, Inc. and Meadowlark Plantations, Inc**.

5.02.j. Herein defendant admits paragraph 14(j) of the complaint insofar as it is alleged therein that **Atty. Jose C. Concepcion and other registered stockholders of Primavera Farms, Inc., Silver Leaf Plantations, Inc. and Meadowlark Plantations, Inc. executed Voting Trust Agreements in favor of herein defendant over the shares of stock in SMC registered in the names of said corporations**. Herein defendant however denies that, in said deeds of trust, herein defendant "undertook to hold the SMC shares in trust for the beneficial owners, and to turn over with utmost speed the dividends received on the shares of the latter," **the truth being that herein defendant is the true, lawful and beneficial owner of the SMC shares of stock registered in the names of Primavera Farms, Inc., Silver Leaf Plantations, Inc. and Meadowlark Plantations, Inc.**

5.02.k. Herein defendant admits paragraph 14(k) inclusive of paragraphs (K-2) and (K-2), insofar as it is alleged that Agricultural Consultancy Services, Inc., Archipelago Realty Corporation, Balete Ranch, Inc., Black Stallion Ranch, Inc., Discovery Realty Corporation, First United Transport, Inc., Kaunlaran Agricultural Corporation, Landair International Marketing Corporation, Misty Mountains Agricultural Corporation, Pastoral Farms, Inc., Oro Verde Services, Inc., Radyo Filipino Corporation, Reddee Developers, Inc., Verdant Plantations, Inc., and Vesta Agricultural Corporation, Hyco, Inc. and Ventures Securities, Inc. **were incorporated by lawyers of the ACCRA Law Offices**. Herein defendant, however, denies, for lack of knowledge or information sufficient to form a belief as to the truth thereof, paragraph 14(k-3) of the complaint to the effect that "[t]he stockholders who appear as incorporators in most of the other Respondent Corporations are also lawyers of the ACCRA Law Offices, who as early as 1987 had admitted under oath that they were acting only as "nominee stockholders."

5.02. l. Herein defendant denies paragraph 14(l) of the complaint, **the truth being that the companies incorporated in his behalf by the ACCRA Law Office cumulatively own less than 20% of the outstanding capital stock of SMC**, that herein defendant did not use the coconut levy funds, or any part thereof, to acquire his shareholdings in SMC.

x x x x x x x x x

5.02.o. **Herein defendant admits paragraph 14(o) of the complaint insofar as it is alleged therein that herein defendant**

Supreme Court E-Library

and/or the corporations affiliated with him own approximately 18% of the outstanding common stock of SMC. Herein defendant however denies that he owns or has an interest in the SMC shares acquired with the use of 'coconut levy money,' those owned by 'government' or those owned by the 'SMC employee retirement fund,' the truth being that herein defendant has no interest in those shareholdings. Herein defendant likewise denies the allegations in paragraph 14(o) of the complaint in regard the shareholdings in SMC of defendant Juan Ponce Enrile, Jaka Investments Corporation and ACCRA Investment Corporation for lack of knowledge or information sufficient to form a belief as to the truth thereof.[65] (emphasis and underscoring supplied)

Similarly, in their Answer to the Third Amended Complaint, the Cojuangco companies made the following material admissions:

5.02. Insofar as it refers to the other defendants, herein defendants deny paragraph 14 of the complaint for lack of knowledge or information sufficient to form a belief as to the truth thereof. Insofar as it refers to herein defendants, they deny paragraph 14 of the complaint, the truth being that herein defendants have not been used as fronts, whether by defendant Eduardo Cojuangco, Jr. or any other defendant, for the purposes stated therein. The shares of stock in San Miguel Corporation (SMC) registered in the names of herein defendants were not acquired with the use of coconut levy funds.

5.02.b. Herein defendants deny paragraph 14(h) the truth being that herein defendant corporations were all duly incorporated and constituted, and their assets acquired, in accordance with the Corporation Code and all pertinent laws.

5.02.c. Herein defendants deny paragraph 14(i) of the complaint for lack of knowledge or information sufficient to form a belief except in so far as it is alleged that **they are the registered owners of certain shares of stock in San Miguel Corporation**.

x x x x x x x x x

5.02.e. Herein defendants specifically deny paragraph 14(l) of the complaint in so far as it alleges that shares of stock in San Miguel

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[65] *Rollo* (G.R. No. 180702), Vol. II, pp. 592-593, 597-598, 600-603.

Supreme Court E-Library

Corporation of defendants were acquired with the use of coconut levy funds, the truth being that **whatever funds were used to acquire shares of stock in San Miguel Corporation belonged to them**; the rest of the allegations are denied for lack of knowledge or information sufficient to form a belief.

x x x x x x x x x

5.02.h. Herein defendants admit paragraph 14(o) of the complaint insofar as it is alleged therein that **herein defendants own approximately 18% of the outstanding common stock of SMC**. Herein defendants however deny they own or have interest in the SMC shares acquired with the use of 'coconut levy fund,' the truth being that herein defendants have no interest in those shareholdings. Herein defendants likewise deny the allegations in paragraph 14(o) of the complaint in regard the shareholdings in SMC of defendant Juan Ponce Enrile, Jaka Investment Corporation, and ACCRA Investment Corporation for lack of knowledge or information sufficient to form a belief as to the truth thereof.[66] (underscoring and emphasis supplied)

Sources of Funds to Acquire the subject SMC shares

The Sandiganbayan's finding that the "'various sources' of funds" that respondents used to acquire the subject SMC shares is a disputed fact is inaccurate.

As listed in the undisputed facts, the source was already particularly identified as "loans," as confirmed by the exact phrase employed by Cojuangco. In his Answer, Cojuangco denied that he acquired the SMC shares "with the use of coconut levy funds, or in any other manner contrary to law, the truth being that herein defendant acquired the said shares of stock using the **proceeds of loans** obtained by herein defendant **from various sources.**"[67] His *affirmative defense*, therefore, is that the funds came from a different (not coconut levy funds) source in the nature of loans. Cojuangco companies' Answer, meanwhile,

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[66] *Id.* at 616-618.

[67] Cojuangco's Answer, *rollo* (G.R. No. 180702), Vol. II, p. 597.

Supreme Court E-Library

avers that "whatever funds were used to acquire [the SMC shares] belonged to them."[68] Their *affirmative defense* points to **privately owned funds** as the source of payment of the purchase price. As will be explained later, **these affirmative defenses need to be proved, yet Cojuangco, *et al.* did not present any evidence.**

The Sandiganbayan's finding totally disregards the statements of respondents in their joint Pre-Trial Brief that they obtained loans and credit advances from the UCPB and CIIF Oil Mills for the purchase of the subject SMC shares. Consider Cojuangco and the Cojuangco companies' statements in their Pre-Trial Brief:

IV.
PROPOSED EVIDENCE

x x x x x x x x x

4.01 x x x Assuming, however, that plaintiff presents evidence to support its principal contentions, defendant's evidence in rebuttal would include testimonial and documentary evidence showing: a) the ownership of the shares of stock prior to their acquisition by defendants (listed in Annexes 'A' and 'B'); b) the consideration for the acquisition of the shares of stock by the persons or companies in whose names the shares of stock are now registered; and c) **the source of the funds used to pay the purchase price**.

4.02 **Herein defendants intend to present the following evidence**:

a. Proposed Exhibits __, __, __,

Records of San Miguel Stock Transfer Service Corporation which would show from whom the shares of stock listed in Annexes "A" and "B" were acquired, the Certificates of Stocks which were cancelled as a result of the transactions, and the resulting Certificates of Stock in the names of the present stockholders listed in Annexes "A" and "B", and upon whose instructions the transfers and the corresponding cancellation of Certificates of Stock and the issuance of new Certificates of Stock were made;

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[68] Cojuangco Companies' Answer, *rollo* (G.R. No. 180702), Vol. II, p. 617.

b. Proposed Exhibits __, __, __,

Records of the United Coconut Planters Bank which would show borrowings of the companies listed in Annexes "A" and "B", or companies affiliated or associated with them, which were **used to source payment of the shares of stock of the San Miguel Corporation subject of this case**.

4.03 **Witnesses**.

(a) Defendant Eduardo M. Cojuangco, Jr., who shall testify on the acquisition of the SMC shares and the sources of the funds utilized in the acquisition of the same. He will also testify on the injury that he has suffered as a consequence of the sequestration of the SMC shares listed in Annex "B" and the filing of the present suit.

(b) **A representative of the United Coconut Planters Bank who will testify in regard the loans which were used to source the payment of the purchase price of the SMC shares of stock**.

(c) **A representative of the CIIF Oil Mills who will testify in regard the loans or credit advances which were used to source the payment of the purchase price of the SMC shares of stock.**

d) A representative of San Miguel Stock Transfer Service Corporation who will testify on the records referred to in paragraph 4.02(a).

4.04. Herein defendants reserve the right to present such other evidence as may be warranted during the course of the trial of the above-entitled case.[69] (underscoring and emphasis supplied)

Evidently, the identity of the various sources in funding the stock purchase became pronounced during the pre-trial. **The statements are clear admission on respondents' part that the purchase price of the subject SMC shares were paid, either in whole or in part, out of loans and credit advances from the UCPB and CIIF Oil Mills**.

Had there been other sources, Cojuangco and the Cojuangco companies would have readily mentioned them at the pre-trial stage where all documents intended to be presented during trial

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[69] *Rollo* (G.R. No. 180702), Vol. II, pp. 634-637.

Supreme Court E-Library

with a statement of the purposes of their offer[70] should be stated. The reservation to present other evidence was, it bears noting, conditioned only on *what may be warranted in the course of trial*.

Respondents having admitted that such loans and credit advances funded the acquisition of the SMC shares, the plaintiff-Republic did not have to present proof thereof anymore. For judicial admissions do *not* require proof[71] to establish that UCPB loans and CIIF Oil Mills credit advances financed the stock purchase transaction of subject SMC shares.

The majority holds that Cojuangco, *et al.*'s joint Pre-Trial Brief did not submit or disclose what these loans were, since they were merely placed under "Proposed Evidence" which were not yet intended as admissions of any fact.

While the majority agrees that certain statements in a pre-trial brief can be the source of admissions, it limits them to those clearly identified by a submitting party as expressly admitted facts.

I do take exception to this hard-and-fast rule.

Bearing in mind the **purpose** of pre-trial which is full disclosure to avoid surprise, *Cojuangco, et al.*'s Pre-Trial Brief undoubtedly presents in a capsule the defense's version of the case.

In *Republic v. Sarabia*,[72] the Court found further enlightenment from a party's Pre-trial Brief in arriving as to the precise time at which just compensation should be fixed (*i.e.*, as of the time of actual taking of possession by the expropriating entity), which was found to be sometime in 1956. The Court therein did not stop with the admissions in the Answer but **appreciated the submissions in the Pre-Trial Brief** to buttress the same. Aside from lifting those under the sub-heading of "Admissions," it

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[70] ADMINISTRATIVE CIRCULAR No. 3-99 (January 15, 1999).

[71] RULES OF COURT, Rule 129, Sec. 1.

[72] G.R. No. 157847, August 25, 2005, 468 SCRA 142.

considered those under "Brief Statement of Respondent's Claim" that presented the proposed version of the party *without the benefit of having elicited an acceptance of the stipulation from the other party.* The pertinent portion of that decision reads:

> Besides, **respondents no less averred in their Pre-Trial Brief:**
>
> I. BRIEF STATEMENT OF THE RESPONDENTS' CLAIM
>
> 1. That the defendants are the owners of that certain parcel of land located at Pook, Kalibo, Aklan, Philippines, which is covered by Original Certificate Title No T-1559-6. A portion of the land has been occupied by the plaintiff **for many years now which portion of land is indicated on the sketch plan which is marked Annex 'B' of the complaint**.
>
> x x x x x x x x x
>
> I1. ADMISSION
>
> x x x x x x x x x
>
> 2. That this land has been in the possession of the plaintiff **for many years** now without paying any rental to the defendants. (Emphasis supplied)
>
> x x x x x x x x x

Surely, private respondents' admissions in their Answer and Pre-Trial Brief are judicial admissions which render the taking of the lot in 1956 conclusive or even immutable. And well-settled is the rule that an admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. A judicial admission is an admission made by a party in the course of the proceedings in the same case, for purposes of the truth of some alleged fact, which said party cannot thereafter disprove. Indeed, an admission made in the pleading cannot be controverted by the party making such admission and are conclusive as to him, and that all proofs submitted by him contrary thereto or inconsistent therewith should be ignored whether objection is interposed by a party or not.[73] (underscoring supplied)

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[73] *Id.* at 149-150.

Supreme Court E-Library

Indeed, the Rules re-echo that "[t]he parties are bound by the representations and statements in their respective pre-trial briefs."[74] In fact, in the present case, the Sandiganbayan's Pre-Trial Order reminded the parties:

> x x x At this stage, the plaintiff then reiterated its earlier request to consider the pre-trial terminated. The Court sought the positions of the other parties, whether or not they too were prepared to submit their respective positions on the basis if what was before the Court at pre-trial. All of the parties, in the end, have come to an agreement that they were submitting their own respective positions for purposes of pre-trial on the basis of the submissions made of record. (underscoring supplied)

One such admission is the submission in Cojuangco, *et al.*'s joint Pre-Trial Brief that revealed the **identity of the loans as advances from CIIF Oil Mills and loans from UCPB.** They are bound by this representation in their Pre-Trial Brief, at least, insofar as the basic fact that the borrowings were obtained from CIIF Oil Mills and UCPB.

Cojuangco, *et al.* are not bound, of course, to ventilate during trial the full details of these loan transactions. As correctly stated by the majority opinion, the witnesses and documents might or might not be presented at all. The Republic, meanwhile, asserts that the specific details thereof are no longer necessary to prove its case.

The express condition that the plaintiff presents first its evidence is inherent in every proceeding. In fact, a defendant may file a demurrer to evidence after the presentation of plaintiff's evidence. The option to avail of the opportunity to present defense evidence is the call of the defendant, but he must be mindful of whatever consequences an omission thereof may present, which will be discussed hereunder.

It is also observed that during the pre-trial conference, the Sandiganbayan was stuck in belaboring the extraction of "specifics

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[74] A.M. No. 03-1-09-SC (July 13, 2004) "Rule on Guidelines to be Observed by Trial court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures."

of the identification of these wrongs or omissions."[75] If there was a need for a definite statement of matters which were not averred with sufficient particularity, it should have been the defendants who filed at the outset a motion for a bill of particulars. That all the defendants were able to intelligently prepare their respective responsive pleadings can only mean that the allegations of the Complaint were sufficiently clear to them.

The Sandiganbayan could have proceeded in accomplishing the other objectives of a pre-trial and allowing the parties to lay down their available evidence, whatever these may be, without pre-judging the inadequacy and competency of their evidence or even if the sets of evidence were far from what the Sandiganbayan perceived to be ideal. It, however, even went into a premature determination of the probative value of COA reports which were yet to be offered and weighed.

I commend the Sandiganbayan for its vigilance in facilitating the pre-trial. The Sandiganbayan can look behind its frustration and remonstration, and console itself with the realization that, at the end of the day, it can only do so much in conducting a perfect pre-trial. Ultimately, how to advance the theory of the case or defense rests on the parties and their counsels.

Without the Sandiganbayan anticipating, the Republic perhaps took that conscious and cautious step in proceeding forward and submitting that there was no need, after all, to present documentary and testimonial evidence in light of the *judicial admissions* in its favor and the *prima facie* circumstances laid down by jurisprudence, of which the Court can take judicial notice, that could already sufficiently paint the entire cause of action, absent any refuting evidence coming from the defendants.

Judicial admissions are **generally considered conclusive** to the concerned party. Certain jurisprudence, however, provides the admitting party some **leeway to vary or override such admissions,** provided the matter is identified as an issue and the admitting party presents contrary evidence during trial. In one case, it was held:

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[75] Sandiganbayan's Pre-Trial Order.

Supreme Court E-Library

In addition, despite Urdaneta City's judicial admissions, the trial court is still given leeway to consider other evidence to be presented for said admissions may not necessarily prevail over documentary evidence, *e.g.*, the contracts assailed. A party's testimony in open court may also override admissions in the Answer.[76] (underscoring supplied)

On the premise that the admissions were not conclusive prior to trial, Cojuangco, *et al.*, however, did not go to trial even to attempt to modify their earlier judicial admissions. Hence, their judicial admissions eventually solidified.

To the extent that the stock acquisition was **exclusively** funded by such loans and credit advances, however, the question cannot be immediately resolved in favor of the plaintiff via a summary judgment.

In the Resolution assailed in G.R. No. 166859, the Sandiganbayan committed no grave abuse of discretion in giving respondents — the party against whom the motion for summary judgment was directed — the benefit of all favorable inferences in viewing the evidence. Any doubt as to the existence of an issue of fact must be resolved against the movant.[77]

In G.R. No. 180702, however, the Sandiganbayan *erred* when it still adopted the same position, despite the conduct or opportunity of trial. Particularly, the Sandiganbayan erred when it still counted on the plaintiff to prove the already **admitted fact** that such loans and credit advances funded, in whole or in part, the acquisition of subject SMC shares. Notably, respondents *failed to negate*, *vary or override*, on grounds allowed by the rules, their *standing admission*. **That such loans and credit advances fully or partially bankrolled the stock purchase can thus no longer be contradicted.**

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[76] *Asean Pacific Planners v. City of Urdaneta*, G.R. No. 162525, September 23, 2008, 566 SCRA 219, 235; *vide* RULES OF COURT, Rule 132, Sec. 2.

[77] *Garcia v. Court of Appeals*, G.R. No. 117032, July 27, 2000, 336 SCRA 475, 481.

Supreme Court E-Library

On the exclusivity of the funds, it is not in the plaintiff's interest to prove the allegation that private funds partly financed the stock purchase. Conversely stated, the plaintiff-Republic may not be expected to prove the **negative assertion** that no other source of funding was utilized to buy the subject SMC shares. It need not go forward to prove that respondents did not use private funds. That the stock purchase was not exclusively funded by such loans and credit advances is a matter of defense on the part of respondents, upon which case the burden of evidence shifts.[78]

Herrera v. Court of Appeals[79] teaches that **it is not incumbent upon the plaintiff to adduce positive evidence to support a negative averment** (*i.e.*, acquired *without* using private funds) the truth of which is fairly indicated by established circumstances and **which, if untrue, could readily be disproved by the production of documents or other evidence probably within the defendant's possession or control**.

Even assuming *arguendo* that "without using private funds" is elemental to the cause of action of the plaintiff who must bear the burden of proof, *Philippine Savings Bank v. Geronimo*[80] instructs that "**negative allegations need not be proved** even if essential to one's cause of action or defense **if they constitute a denial of the existence of a document the custody of which belongs to the other party**."[81]

This category of relevant facts that need not be proven by evidence is identified as *"facts peculiarly within the knowledge of the opposite party*."[82]

Cojuangco, *et al.* could have simply presented in evidence documents under their custody, if any, to show that other financial

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[78] *Vide People v. Quebral*, 68 Phil. 564, 567 (1939).

[79] 427 Phil. 577, 590-591 (2002).

[80] G.R. No. 170241, April 19, 2010, 618 SCRA 368.

[81] *Id.* at 376.

[82] *Vide Republic v. Vda. De Neri*, G.R. No. 139588, March 4, 2004, 424 SCRA 676, 692-693.

Supreme Court E-Library

resources were used to finance the stock purchase, which may have qualified, on allowable grounds, their earlier judicial admission and accordingly crumbled the plaintiff's case into fractions.

Whichever way of looking at the matter of "non-usage or usage of private funds" — either as a "negative averment" on the part of the Republic or an "affirmative defense" on the part of Cojuangco, *et al.* — the bottom line remains the same: the burden of evidence that there were other loans that partly funded the purchase of the SMC shares was borne by Cojuangco, *et al.*, failing which is fatal to them.

It bears reiterating that this opportunity for Cojuangco, *et al.* to (i) disprove the Republic's **negative averment** that no private funds were used, or (ii) otherwise prove the defense's **affirmative allegation** that private funds or partly private funds were used explains why it was proper to deny the Republic's motion for summary judgment and go to trial. Cojuangco, *et al.* opted not to avail of that opportunity. **Consequently, the negative averment stands and the affirmative defense fails.**

This same blunder was committed by Cojuangco in the case of *Republic v. Estate of Hans Menzi*[83] wherein he purposely skipped the presentation of his defense evidence and consequently failed to prove his affirmative allegations. The Court therein rejected Cojuangco's contention that his allegation that the shares were registered in his name as a nominee of Hans Menzi was not an affirmative defense but a specific denial, as such the allegation need not be proven unless the Republic presents adequate evidence to prove its case.

> It is procedurally required for each party in a case to prove his own affirmative allegations by the degree of evidence required by law. In civil cases such as this one, the degree of evidence required of a party in order to support his claim is preponderance of evidence, or that evidence adduced by one party which is more conclusive and credible than that of the other party. It is therefore incumbent upon the plaintiff who is claiming a right to prove his case. Corollarily, the defendant must likewise prove its own allegations to buttress its claim that it is not liable.

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[83] G.R. No. 152578, November 23, 2005, 476 SCRA 20.

The party who alleges a fact has the burden of proving it. The burden of proof may be on the plaintiff or the defendant. It is on the defendant if he alleges an affirmative defense which is not a denial of an essential ingredient in the plaintiff's cause of action, but is one which, if established, will be a good defense — *i.e.*, an "avoidance" of the claim.

In the instant case, Cojuangco's allegations are in the nature of affirmative defenses which should be adequately substantiated. He did not deny that Bulletin shares were registered in his name but alleged that he held these shares not as nominee of Marcos, as the Republic claimed, but as nominee of Menzi. He did not, however, present any evidence to support his claim and, in fact, filed a Manifestation dated July 20, 1999 stating that he "sees no need to present any evidence in his behalf."[84] (emphasis and underscoring supplied)

In the same manner, Cojuangco admitted in the present case that he purchased the SMC shares of stock but averred that he used the proceeds of certain loans to finance the purchase of the SMC shares. This defense by way of avoidance of the plaintiff's claim could have buttressed the defendants' claim that not a single peso of public money was used in buying the shares. Cojuangco, however, took a similar route in the present case, despite the myriad of admissions, judicial notices, and *prima facie* circumstances that, absent any varying evidence, consequently fortified the Republic's case. Indeed, "**in the final analysis, the party upon whom the ultimate burden lies is to be determined by the pleadings, *not* by who is the plaintiff or the defendant**."[85]

After the trial (or the lack thereof despite the trial settings), it became clear that the **borrowings from CIIF Oil Mills and UCPB exclusively funded the purchase of the SMC shares.**

COCONUT LEVY FUNDS AS PUBLIC FUNDS

For a clear picture of the genesis of the coconut levy funds, the historical narration in the 1989 case of *Philippine Coconut*

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[84] *Id.* at 55-56.

[85] *Republic v. Vda. De Neri*, *supra* note 82 at 692.

Supreme Court E-Library

Producers Federation, Inc. (COCOFED) v. Presidential Commission on Good Government[86] bears recalling, *viz.*:

The COCONUT LEVY FUNDS:

The sequestration of the corporations and the other acts complained of were undertaken by the PCGG preparatory to the filing of suit in the Sandiganbayan against Marcos and his associates for the illicit conversion of the coconut levy funds, purportedly channeled through the COCOFED and the other sequestered businesses, into private pelf. These funds fall into four general classes, *viz.*: (a) the Coconut Investment Fund created under R.A. 6260 (effective June 19, 1971); (b) the Coconut Consumers Stabilization Fund created under PD 276 (effective August 20, 1973); (c) the Coconut Industry Development Fund created under PD 582 (effective November 14, 1974); and (d) the Coconut Industry Stabilization Fund created under P.D. 1841 (effective October 2, 1981).

The Coconut Investment Fund (CIF):

The Coconut Investment Fund, or CIF, was put up in 1971 by R.A. 6260 which declared it to be the national policy to accelerate the development of the coconut industry through the provision of adequate medium and long term financing for capital investment in the industry. A levy of ₱0.55 was imposed on the first domestic sale of every 100 kilograms of copra or equivalent coconut product, fifty centavos (₱0.50) of which accrued to the CIF. The Philippine Coconut Administration (or PHILCOA) received three centavos (₱0.03) of the five remaining, and the balance was placed "at the disposition of the recognized national association of coconut producers with the largest x x x membership"— which association was declared by PHILCOA to be petitioner COCOFED.

The CIF was to be used exclusively to pay for the Philippine Government's subscription to the capital stock of the Coconut Investment Company (CIC), a corporation with a capitalization of ₱100,000,000.00 created by the statute to administer the Fund, as has already been stated, and to invest its capital in financing "agricultural, industrial or other productive (coconut) enterprises" qualified under the terms of the statute to apply for loans with the CIC. The State was to initially subscribe to CIC's capital stock "for

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[86] G.R. No. 75713, October 2, 1989, 178 SCRA 236.

Supreme Court E-Library

and on behalf of the coconut farmers," to whom such shares were supposed to be transferred "upon full payment (with the collections on the levy) of the authorized capital stock x x x or upon termination of a ten-year period from the start of the collection of the levy x x x, whichever comes first." The scheme, in short, called for the use of the CIF — funds collected mainly from coconut farmers– to pay for the CIC shares of stock to be subscribed by the Government and held by it until the levy was lifted, whereupon the Government was to "convert" the receipts issued to the farmers (as evidence of payment of the levy) "into shares of stock"— this time in the farmers' names — in the new, private corporation to be formed by them at such time, conformably with the provisions of the law.

The levy imposed by R.A. 6260 was collected from 1972 to 1982.

The Coconut Consumers Stabilization Fund (CCSF)

P.D. 276 established a second fund on August 20, 1973, barely a year after the creation of the CIF. The decree imposed a "Stabilization Fund Levy" of fifteen pesos (₱15.00) on the first sale of every 100 kilograms of *copra resecada* or equivalent product. The revenues were to be credited to the Coconut [Consumers] Stabilization Fund (CCSF) which was to be used to subsidize the sale of coconut-based products at prices set by the Price Control Council, in order to stabilize the price of edible oil and other coconut oil-based products for the benefit of consumers. The levy was to be collected for only one year. The CCSF however became a permanent fund under PD 414.

The Coconut Industry Development Fund (CIDF):

On November 14, 1974, PD 582 was promulgated setting up yet another "permanent fund x x (this time to) finance the establishment, operation and maintenance of a hybrid coconut seednut farm x x x (and the implementation of) a nationwide coconut replanting program" "using precocious high-yielding hybrid seednuts x x x to (be) distribute(d), x x x free, to coconut farmers." The fund was denominated the Coconut Industry Development Fund, or the CIDF. Its initial capital of ₱100 million was to be paid from the CCSF, and in addition to this, the PCA was directed to thereafter remit to the fund "an amount equal to at least twenty centavos (₱0.20) per kilogram of *copra resecada* or its equivalent out of its current collections of the coconut consumers stabilization levy." The CIDF was assured

Supreme Court E-Library

of continued contribution from the permanent levy in the same amount deemed to be "automatically imposed" in the event of the lifting of the Stabilization Fund Levy.

The Coconut Industry Investment Fund (CIIF)

The various laws relating to the coconut industry were codified in 1976; promulgated on October 21 of that year was PD 961 or the "Coconut Industry Code," which later came to be known as the "Revised Coconut Industry Code" upon its amendment by PD 1468, effective June 11, 1978. The Code provided for the continued enforcement of the Stabilization Fund Levy imposed by PD 276 and for the use of the CCSF and the CIDF for substantially the same purposes specified by the enactments ordaining their creation.

A new provision was however inserted in the Code, authorizing the use of the balance of the CIDF not needed to finance the replanting program and other authorized projects, for the acquisition of "shares of stock in corporations organized for the purpose of engaging in the establishment and operation of industries, x x x commercial activities and other allied business undertakings relating to coconut and other palm oil indust(ries)." From this fund thus created, the Coconut Industry Investment Fund or the CIIF, were purchased the shares of stock in what have come to be known as the "CIIF companies"— the sequestered corporations into which said CIIF (Coconut Industry Investment Fund) was heavily invested after its creation.

The Coconut Industry Stabilization Fund (CISF): (Formerly CCSF)

The collection of the CCSF and the CIDF was suspended for a time in virtue of PD 1699. However, on October 2, 1981, PD 1841 was issued reviving the levies and renaming the CCSF the Coconut Industry Stabilization Fund, or the CISF, to which accrued the new collections. The impost was in the amount of ₱50.00 for every 100 kilos of *copra resecada* or equivalent product delivered to exporters and other copra users. The funds collected were to be apportioned among the CIDF, the COCOFED, the PCA, and the "bank acquired for the benefit of the coconut farmers under PD 755" referring to the United Coconut Planters Bank or the UCPB.

The AGENCIES INVOLVED:

As may be observed, **three agencies played key roles in the collection, management, investment and use of the coconut levy**

Supreme Court E-Library

funds: (a) the Philippine Coconut Authority (PCA), formerly the Philippine Coconut Administration or the PHILCOA; (b) the COCOFED; and (c) the UCPB. Charged with the duty to "receive and administer the funds provided by law," the Philippine Coconut Authority or the PCA was created on June 30, 1973 by P.D. 232 to replace and assume the functions of (1) the Philippine Coconut Administration or PHILCOA (which had been established in 1954), (2) the Coconut Coordinating Council (CCC), and (3) the Philippine Coconut Research Institute (PHILCORIN). By virtue of the Decree, the PCA took over the collection of the CIF Levy under RA 6260 in 1973, while subsequent statutes, to wit, PD 276 (in relation to PD 414), PD 582, and PD 1841, empowered it specifically to manage the CCSF, the CIDF, and the CISF, from the time of their creation. Under the laws just mentioned, the PCA, as the government arm that "formulate(s) x x x (the) general program of development for the coconut x x x and palm oil indust(ries)," is allotted a share in the funds kept in its trust. Its governing board is composed of members coming from the public and private sectors, among them representatives of COCOFED.

The Philippine Coconut Producers Federation, Inc. or the COCOFED, as the private national association of coconut producers certified in 1971 by the PHILCOA as having the largest membership among such producers, receives substantial portions of the coconut funds to finance its operating expenses and socio-economic projects. R.A. 6260 entrusted it with the task of maintaining "continuing liaison with the different sectors of the industry, the government and its own mass base." Its president sits on the governing board of the PCA and on the Philippine Coconut Consumers Stabilization Committee, the agency assisting the PCA in the administration of the CCSF. It is also represented in the Board of Directors of the CIC and of two (2) CIIF companies COCOMARK (the COCOFED Marketing Corporation) and COCOLIFE (the United Coconut Planters' Life Insurance Co.).

The United Coconut Planters Bank (or the UCPB) is a commercial bank acquired "for the benefit of the coconut farmers" with the use of the Coconut Consumers Stabilization Fund (CCSF) in virtue of P.D. 755, promulgated on July 29, 1975. The Decree authorized the Bank to provide the intended beneficiaries with "readily available credit facilities at preferential rates." It also authorized the distribution of the Bank's shares of stock, free, to the coconut farmers; and some 1,405,366 purported recipients have been listed as UCPB stockholders as of April 10, 1986.

Supreme Court E-Library

The UCPB was thereafter empowered by PD 1468 to "(make) investments for the benefit of the coconut farmers" using that part of the CIDF referred to as the CIIF. Thus were organized the "CIIF companies" subject of the sequestration orders herein assailed. As in the case of the shares of stock in the UCPB, the law provided for the "equitable distribution" to the coconut farmers, free, of the investments made in the CIIF companies. Among the corporations in which the UCPB has come to have substantial shareholdings are the COCOFED Marketing Corporation (COCOMARK), United Coconut Planters' Life Insurance (COCOLIFE) GRANEX, ILICOCO, Southern Island Oil Mill, Legaspi Oil of Davao City and of Cagayan de Oro City, Anchor Insurance Brokerage, Inc., Southern Luzon Coconut Oil Mills, and San Pablo Oil Manufacturing Co., Inc. Some of these corporations in turn acquired UCPB shares of stock as well as shareholdings in the San Miguel Corporation.[87] (emphasis and underscoring supplied)

The foregoing historical account has settled that **UCPB and CIIF Oil Mills owe their existence to the coconut levy funds and the martial law issuances**.[88] The Court went on in the same case to pronounce:

The utilization and proper management of the coconut levy funds, raised as they were by the State's police and taxing powers, are certainly the concern of the Government. It cannot be denied that it was the welfare of the entire nation that provided the prime moving factor for the imposition of the levy. 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. **The coconut levy funds are clearly affected with public interest. Until it is demonstrated satisfactorily that they have legitimately become private funds, they must *prima facie* and**

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[87] *Philippine Coconut Producers Federation, Inc. (COCOFED) v. Presidential Commission on Good Government*, G.R. No. 75713, October 2, 1989, 178 SCRA 236, 240-246.

[88] *Vide Republic v. Sandiganbayan*, G.R. No. 118661, January 22, 2007, 512 SCRA 25, 54.

by reason of the circumstances in which they were raised and accumulated be accounted subject to the measures prescribed[.][89] (emphasis and underscoring supplied)

Still in the same case,[90] the Court held that "[t]he coconut levy funds being clearly affected with public interest, it follows that corporations formed and organized from those funds, and **all assets acquired therefrom**, could also be regarded as **'clearly affected with public interest**.**'**"

In the 2001 case of *Republic v. COCOFED*,[91] the Court even categorically stated that "[t]he coconut levy funds are not only affected with public interest; **they are, in fact, *prima facie* public funds**."

Once more, in the 2007 case of *Republic v. Sandiganbayan (First Division)*,[92] the Court recapitulated:

> Opinions had, for some time, been divided as to the nature and ownership of a fund with public roots but with private fruits, so to speak. The Court, however, veritably wrote *finis* to both issues in at least seven (7) ill-gotten cases decided prior to the filing of the present petition in 1995, and in several more subsequent cases, notably in *Republic v. Cocofed* where the Court declared **the coconut levy fund as partaking the nature of taxes, hence is not only affected with public interest, but "are in fact *prima facie* public funds**."
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> x x x x x x x x x
>
> In *Republic v. COCOFED*, the Court observed that **the lifting of sequestration in coconut levy companies does not relieve the holders of stock in such companies of the obligation of proving how that stock had been legitimately transferred to private ownership**. x x x[93] (emphasis and underscoring supplied)

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[89] *Philippine Coconut Producers Federation, Inc. (COCOFED) v. Presidential Commission on Good Government, supra* note 87 at 252-253.

[90] *Supra* note 7, February 16, 1993 Resolution.

[91] G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462.

[92] G.R. No. 118661, January 22, 2007, 512 SCRA 25, 28, 53.

[93] *Id.* at 28, 53.

Supreme Court E-Library

Since the UCPB was **acquired** by the government using the coconut levy funds,[94] and "all assets acquired therefrom" are *prima facie* public in character, it follows that the coco levy funds remained public in character upon their transfer, pursuant to Presidential Decree (P.D.) No. 755,[95] from the Philippine Coconut Authority to the UCPB. The funds remained in the government's possession throughout the entire transaction.

UCPB and CIIF Oil Mills, all of which are coconut levy companies, had financed the purchase by respondents of the subject SMC shares. Undeniably, the subject SMC shares can be inescapably treated as fruits of funds that are *prima facie* public in character. *Have the subject SMC shares, as the by-product of the proceeds of the loan and credit advances, legitimately become private in character?*

Given the Court's pronouncement that coconut levy funds are *prima facie* public in nature, the holder of shares of stock that trace their roots from such funds must, in light of the immediately-quoted portion of the Court's decision in the 2007 case of *Republic v. Sandiganbayan (First Division)*, overcome the *prima facie* presumption or otherwise prove that the shares are legitimately privately owned.

In view of that opportunity that was yet to be availed by respondents during trial, the Sandiganbayan exercised sound discretion in denying the plaintiff's motion for summary judgment by the assailed Resolution in G.R. No. 166859. A court, when confronted with this situation, is justified in not granting a summary judgment. This marked difference provides an alert tab for courts to proceed to trial.

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[94] The Court, indeed, has already made the categorical declaration in *COCOFED v. PCGG* (G.R. No. 75713, October 2, 1989, 178 SCRA 236), reiterated in *Republic v. COCOFED* (G.R. Nos. 147062-64, December 14, 2001; 372 SCRA 462), that the UCPB was acquired with the use of the Coconut Consumers Stabilization Fund, by virtue of P.D. 755 (1975).

[95] APPROVING THE CREDIT POLICY FOR THE COCONUT INDUSTRY AS RECOMMENDED BY THE PHILIPPINE COCONUT AUTHORITY AND PROVIDING FUNDS THEREFOR.

Supreme Court E-Library

The same posture cannot stand, however, with respect to the Sandiganbayan's subsequent Decision of November 28, 2007, challenged in G.R. No. 180702, wherein respondents already abstained from presenting countervailing evidence after affording them the chance. In other words, Cojuangco, *et al.* failed to overcome the *prima facie* public character of the nature of the SMC shares as fruits of pubic funds.

Burden of proof is the duty of any party to present evidence to establish his claim or defense by the amount of evidence required by law, which is preponderance of evidence in civil cases. The party, whether plaintiff or defendant, who asserts the affirmative of the issue has the burden of proof to obtain a favorable judgment.[96] Upon the plaintiff in a civil case, the burden of proof never parts, though in the course of trial, once the plaintiff makes out a *prima facie* case in his favor, the duty or the burden of evidence shifts to the defendant to controvert the plaintiff's *prima facie* case; otherwise, a verdict must be returned in favor of the plaintiff.[97] It is the burden of evidence which shifts from party to party depending upon the exigencies of the case in the course of trial.[98]

The term *prima facie* evidence denotes evidence which, if unexplained or uncontradicted, is sufficient to sustain the proposition it supports or to establish the facts.[99] *Prima facie* means it is "sufficient to establish a fact or raise a presumption unless disproved or rebutted."[100]

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[96] *DBP Pool of Accredited Insurance Companies v. Radio Mindanao Network, Inc.*, G.R. No. 147039, January 27, 2006, 480 SCRA 314, 322.

[97] *Parel v. Prudencio*, G.R. No. 146556, April 19, 2006, 487 SCRA 405, 418-419, citing *Jison v. CA*, 350 Phil. 138, 173 (1998).

[98] *Vide Capitol Wireless, Inc. v. Balagot*, G.R. No. 169016, January 31, 2007, 513 SCRA 672, 679, citing *Bautista v. Sarmiento*, No. L-45137, September 23, 1985, 138 SCRA 587, 593.

[99] *Bautista v. Court of Appeals*, G.R. No. 143375, July 6, 2001, 360 SCRA 618, 627.

[100] *BLACK'S LAW DICTIONARY* (8th ed., 2004), p. 1228.

Supreme Court E-Library

In fine, plaintiff having shown that the SMC shares came into fruition from coco levy funds that are *prima facie* public funds, it was incumbent upon respondents to go forward with contradicting evidence. *This they did not do*.

Respondents merely opted to raise a question of law, the resolution of which the Sandiganbayan erroneously evaded in its Decision. They maintain that the proceeds of the loan belonged to them in view of the nature of a loan, citing Civil Code provisions that a person who receives a loan of money acquires ownership thereof. They explain that the money loaned once granted belongs in ownership to the borrower who has the obligation only to pay back the amount.

Articles 1933 and 1953 of the Civil Code read:

Art. 1933. — By the contract of loan, one of the parties delivers to another, either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a commodatum; or money or other consumable thing upon the condition that the same amount of the same kind and quality shall be paid, in which case the contract is simply called a loan or mutuum.

Commodatum is essentially gratuitous.

Simple loan may be gratuitous or with a stipulation to pay interest.

In commodatum the bailor retains the ownership of the thing loaned, while in simple loan, ownership passes to the borrower.

x x x x x x x x x

Art. 1953. — A person who receives a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality.

Respondents posit that an implied trust[101] wherein the price of the property bought is "paid by another" could not arise

[101] Under Article 1448 of the Civil Code, which reads: There is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property. The former is the trustee, while the latter is the beneficiary. x x x.

Supreme Court E-Library

since the borrower, in a loan contract involving a fungible object like money, acquires ownership of money.

Respondents' characterization of the legal complexion of the transaction does not lie.

First, the Sandiganbayan case is not a simple collection case for the return of the very same series of money lent. *Second*, respondents' position presupposes that there is nothing illegal, invalid or improper in the grant of the loan. *Third*, respondents' position limits the depiction of a trust relationship to only one type.

Executive Order No. 1[102] issued on February 28, 1986 states:

x x x x x x x x x

SECTION 2. The [PCGG] shall be charged with the task of assisting the President in regard to the following matters:

(a) The recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, 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**. (emphasis and underscoring supplied)

Executive Order No. 2[103] issued on March 12, 1986 states:

x x x x x x x x x

WHEREAS, the Government of the Philippines is in possession of evidence showing that there are assets and properties purportedly pertaining to former President Ferdinand E. Marcos, and/or his wife,

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[102] CREATING THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT.

[103] Regarding the Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated By Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, Their Close Relatives, Subordinates, Business Associates, Dummies, Agents, or Nominees.

Supreme Court E-Library

Mrs. Imelda Romualdez Marcos, 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 of the Philippines** 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 and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines;

x x x x x x x x x

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, hereby;

x x x x x x x x x

(4) Prohibit former President Ferdinand Marcos and/or his wife, Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees from transferring, conveying, encumbering, concealing or dissipating said assets or properties in the Philippines and abroad, pending the outcome of appropriate proceedings in the Philippines to determine **whether any such assets or properties were acquired by them through or as a result of improper or illegal use of or the conversion of funds belonging to the Government of the Philippines** or any of its branches, instrumentalities, enterprises, banks or financial institutions, **or by taking undue advantage of their official position, authority**, **relationship**, **connection or influence** to unjustly enrich themselves at the expense and to the grave damage and prejudice of the Filipino people and the Republic of the Philippines.

x x x x x x x x x (emphasis and underscoring supplied)

E.O. No. 2 describes ill-gotten assets as, *inter alia*, shares of stock acquired through ***or*** as a result of the improper or illegal use of or the conversion of funds or properties owned by the Government or its branches, instrumentalities, enterprises, banks or financial institutions.

The scope of inquiry on *ill-gotten* shares of stock is not restricted to those that were personally "acquired through" public funds in the form of a simple direct purchase which, crude and

unsophisticated it may seem, is illegal *per se*. Having conceivably taken into account the ingenious and "organized pillage"[104] perpetrated by the Marcos regime, E.O. No. 2 saw it fit to include those that were "acquired as a result of the improper or *illegal* use of" public funds. Notably, E.O. No. 2 covers acquisitions resulting not only from illegal use but also from *improper* use of public funds or properties, not to mention *conversion* thereof.

That the law includes funds from government banks and financial institutions bolsters this conclusion and readily negates respondents' vivid illustrations of bank loan transactions.

Respondents' position only attempts to explain that the subject SMC shares were not directly *acquired through* public funds, but it does not negate the other modes of acquisition (*i.e.*, acquired *as a result of the improper or illegal use* or *conversion* of public funds) which could take on several forms.

"Ill-gotten wealth" is hereby defined as any asset, property, business enterprise or material possession of persons within the purview of Executive Orders 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) Through the receipt, directly or indirectly, of any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the official concerned.

(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;

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[104] Per Teehankee, *C.J.*, in *Presidential Commission on Good Government v. Peña*, No. 77663, April 12, 1988, 159 SCRA 556, 562, 566 citing Justice Isagani Cruz's separate opinion in *Baseco v. PCGG*, 150 SCRA 181, 243, which phrase was borrowed from Constitutional Commissioner Blas Ople.

Supreme Court E-Library

> (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 combination and/or by the issuance, promulgation and/or implementation of decrees and 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.[105] (underscoring supplied)

The act of respondents in employing the instrumentality of a loan transaction and exploiting the legal import thereof does not thus save the day for them, so to speak. The defense's thesis shatters in the context of ill-gotten wealth cases.

The majority holds that ill-gotten wealth must be acquired or taken through "illegal means" only. This limited restatement of the elements and modes of acquiring ill-gotten wealth goes against the expanded and developed nature and dynamics of ill-gotten wealth as legally defined above and which was quoted and applied in the *Hans Menzi* case.

Interestingly, the majority cites the same basic document of Executive Order No. 2 (March 12, 1986) which, in fact, expressly recognizes that acquisitions of ill-gotten wealth may result from either an illegal or improper use or conversion of public funds.

A discussion nonetheless, in no uncertain terms, of the series of legal provisions and rules *vis-à-vis* the acts and omissions of Cojuangco, *et al.* in concluding the presence of illegal means of acquisition is in order.

BREACH OF TRUST AND FIDUCIARY DUTY

In determining whether Cojuangco betrayed public trust, took undue advantage of authority, or violated his fiduciary duty as

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[105] PCGG RULES AND REGULATIONS, Sec. 1(A).

Supreme Court E-Library

a director or officer, the question as to whether he held such positions in the entities involved must first be settled.

It bears noting and reiterating that Cojuangco admitted in his Answer to the Third Amended Complaint that he held, *inter alia*, the positions of President and Member of the Board of Directors of the UCPB as well as Director of the Philippine Coconut Authority (PCA):

> 2.01 Herein defendant admits paragraph 4 only insofar as it alleges the following:
>
> (a) That herein defendant has held the following positions in government: Governor of Tarlac, Congressman of the then First District of Tarlac, Ambassador-at-Large, Lieutenant Colonel in the Philippine Air Force and **Director of the Philippine Coconut Authority**;
>
> (b) That he held the following positions in private corporations: **Member of the Board of Directors of the United Coconut Oil Mills, Inc**.; **President and member of the Board of Directors of the United Coconut Planters Bank**, United Coconut Planters Life Assurance Corporation, and United Coconut Chemicals, Inc.; **Chairman of the Board and Chief Executive Officer of San Miguel Corporation**; x x x[106] (emphasis and underscoring supplied)

What he disputes, however, is whether he had served as an officer or a member of the governing bodies of the PCA and UCPB **at the time the funds used to purchase the SMC shares were obtained in 1983**. The Sandiganbayan found this matter a disputed fact.[107]

Cojuangco's asseverations and the Sandiganbayan's stance ignore the glaring admissions in his Answer.

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[106] *Rollo* (G.R. No. 180702), Vol. II, pp. 592-593.

[107] "3) Whether or not defendant Cojuangco had indeed served in the governing bodies of PCA, UCPB and/or CIIF Oil Mills at the time the funds used to purchase the SMC shares were obtained such that he owed a fiduciary duty to render an account to these entities as well as to the coconut farmers[.]" [*rollo* (G.R. No. 166859), p. 61; (G.R. No. 180702), Vol. II, p. 833].

Supreme Court E-Library

The Complaint made the following allegation:

> 12. Defendant Eduardo 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.[108] (emphasis supplied),

which underscored portion was deemed admitted by him when he did *not* specifically deny it in his Answer, *viz*:

> 5.00. Herein defendant denies paragraph **12** of the complaint, the truth being that whatever assets he has were acquired lawfully and are not "grossly and manifestly disproportionate to his salaries, lawful income and income from legitimately acquired property."[109] (emphasis supplied)

Clearly, Cojuangco's specific denial concerns only the matter of the *acquisition* of his assets. Without specifically denying the matter of his *having served* "as a public officer during the Marcos Administration," the same is deemed admitted.[110]

Judicial notice can be taken of the political history that 1983 (when the subject SMC shares were acquired) formed part of the Marcos Administration. Cojuangco, not having specifically denied or even qualifiedly admitted his tenure as public officer during the Marcos Administration *vis-à-vis* his earlier admissions on the specific public offices or directorships he had held, the ineluctable conclusion is that he held the positions of President and Member of the Board of Directors of the UCPB and of Director of the PCA during the Marcos Administration or, at the very least, in 1983.

The argument that Cojuangco was not a subordinate or close associate of the Marcoses is the biggest joke to hit the century.

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[108] *Rollo* (G.R. No. 180702), Vol. I, p. 148.

[109] *Rollo* (G.R. No. 180702), Vol. II, p. 596.

[110] *Vide* RULES OF COURT, Rule 8, Sec. 10.

Supreme Court E-Library

Aside from the cited offices or positions of power over coconut levy funds, Cojuangco admitted in Paragraph 3.01 of his Answer that on February 25, 1986, Cojuangco left the Philippines with former President Ferdinand Marcos.

Clearly, the intimate relationship between Cojuangco and Marcos equates or exceeds that of a family member or cabinet member, since not all of Marcos's relatives or high government ministers went with him in exile on that fateful date. If this will not prove the more than close association between Cojuangco and Marcos, I do not know what will.

A SURVEY OF THE PERTINENT LAWS RELATIVE TO THE ESTABLISHMENT OF THE **PCA** AND **UCPB** IS ALSO IN ORDER.

Republic Act No. 1145[111] provided the initial manner of appointment and tenure of members of the governing board of the Philippine Coconut Administration (Philcoa), the precursor of present-day PCA, to wit:

CHAPTER III
Governing Body

Section 5. Composition and appointment— **All corporate powers of the PHILCOA shall be vested in, and exercised by a Board of Administrators consisting of five members to be appointed by the President with the consent of the Commission on Appointments,** three of whom shall be coconut planters; Provided, That no person appointed to this board may serve as director or more than two government or semi-government corporations. The President shall designate from among the members of the Board its Chairman.

Section 6. Tenure and compensation— The members of the Board shall serve as designated by the President of the Philippines in their respective appointments **for a term of four years**, but any person to fill a vacancy shall serve only for the unexpired term of the member whom he succeeds. The Chairman shall receive a salary

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[111] "AN ACT CREATING THE PHILIPPINE COCONUT ADMINISTRATION, PRESCRIBING ITS POWERS, FUNCTIONS AND DUTIES, AND PROVIDING FOR THE RAISING OF THE NECESSARY FUNDS FOR ITS OPERATION," enacted on June 17, 1954.

Supreme Court E-Library

of twelve thousand pesos per annum and each member of per diem of twenty-five pesos for every meeting actually attended: Provided, That no member shall earn more than one hundred pesos a month in per diems; Provided, further, that if the member is a public official, he shall not be entitled to any per diem. (emphasis and underscoring supplied)

Almost 20 years later or on June 30, 1973, President Marcos issued P.D. No. 232 which created the Philippine Coconut Authority (PCA) by abolishing the Philcoa, the Coconut Coordinating Council, and the Philippine Coconut Research Institute, *viz.*:

Section 3. Powers and Functions. To carry out the purposes and objectives mentioned in the preceding section, the Authority, through its Board as hereinafter constituted, is hereby vested with the following powers, in addition to those transferred to it under Section 6 of this Decree:

a. To formulate and adopt a general program of development for the coconut and other palm oils industry;

x x x x x x x x x

d. **To supervise, coordinate and evaluate the activities of all agencies charged with the implementation of the various aspects of industry development, and to allocate and/or coordinate the release of public funds in accordance with approved development programs and projects**;

x x x x x x x x x

f. **To receive and administer funds provided by law**; to draw, with the approval of the President, funds from existing appropriations as may be necessary in support of its program, and to accept donations, grants, gifts and assistance of all kinds from international and local private foundations, associations or entities, and to administer the same in accordance with the instructions or directions of the donor or, in default thereof, in the manner it may in its direction determine;

g. To borrow the necessary funds from local and international financing institutions, and to issue bonds and other instruments of indebtedness, subject to existing rules and regulations of the Central Bank, for the purpose of financing programs and projects deemed vital and necessary for the early attainment of its goals and objectives;

Supreme Court E-Library

h. **To formulate and recommend for adoption credit policies affecting production, marketing and processing of coconut and other palm oils**;

x x x x x x x x x

j. To enter into, make and execute contracts of any kind as may be necessary or incidental to the attainment of its purposes and, generally, to exercise all the powers necessary to achieve the purposes and objectives for which it is organized.

Section 4. Governing Board. **The Authority shall be governed by a Board of eleven members, who shall meet as often as necessary, composed of:**

a. Three representatives at-large of the private sector, to be appointed by the President, who shall have recognized competence in the many facets of the industry and be leaders of the industry acknowledged by both the government and private sector members of the coconut community;

b. The Chairman, National Science Development Board;
c. The Undersecretary of Agriculture and Natural Resources;
d. The Undersecretary of Trade;
e. The President, Philippine Coconut Producers Federation;
f. The Chairman, United Coconut Associations of the Philippines;
g. The Chairman of the Board, Coconut Investment Company;
h. The Director, Bureau of Plant Industry;
i. The Director, Bureau of Agricultural Extension.

A Chairman shall be designated by the President from the members of the Board. The Board shall elect a Vice-Chairman who shall assume the functions of the Chairman, whenever the latter is absent or incapacitated, and an Executive Committee of five from among its members, to which it may delegate such powers as it deems fit. (emphasis and underscoring supplied)

Then, barely five years later, Pres. Marcos issued on June 11, 1978 P.D. No. 1468,[112] which provided:

x x x x x x x x x

Section 4. Governing Board. — **The corporate powers and**

[112] Known as the "REVISED COCONUT INDUSTRY CODE."

Supreme Court E-Library

duties of the Authority shall be vested in and exercised by Board of seven (7) members to be appointed by the President, as follows:

a) Two representatives of the Government, one of whom shall be designated by the President as Chairman and the other as Vice-Chairman;

b) Three members recommended by the Philippine Coconut Producers Federation;

c) One member recommended by the United Coconut Association of the Philippines;

d) One member recommended by the owner and operator of the hybrid coconut seednut farm herein authorized to be established.

The Board shall have the following additional powers and duties:

x x x x x x x x x

c) **To disburse the proceeds of the levies for the purposes herein authorized**;

x x x x x x x x x (emphasis and underscoring supplied)

From these amendments to the PCA charter, two things remain crystal clear — *first*, that the members of PCA Board were to be appointed by the President either for a given term or, at the very least, at his pleasure as the appointing authority; and *second*, that the members of the PCA Board had been given vast authority in managing and disbursing the coconut levy funds, which includes the corporations formed and organized therefrom and all assets acquired therefrom, such as the CIIF Ill Mills.

Since appointment as member of the PCA Board is made by the President, judicial notice of Cojuangco's appointment by then President Marcos as PCA Director must be also taken, it being an official act of the executive department of the Philippines.[113] A sampling of available public records in the

[113] *Vide* RULES OF COURT, Rule 129, Sec. 1.

Supreme Court E-Library

form of PCA annual reports[114] confirms that Cojuangco was a member of the governing board of the PCA in the early 1980s.

With respect to the UCPB, Cojuangco's description of it as a "*private* corporation" does not bind the Court and cannot lend support to the proposition that the period during which he was the UCPB President and Director is not within the scope of his subsequent admission as a "*public* officer during the Marcos Administration."

UCPB was a public corporation during the period material to the complaint.

Paragraph 13, Section 2 of the Administrative Code of 1987[115] provides:

(13) Government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: Provided, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations. (underscoring supplied)

Even under the 1973 Constitution, this framework was established with the issuance of Presidential Decree No. 2029[116] which recognized the ruling that "under the [1973] Constitution, government-owned or controlled corporations include those created

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[114] 1981 PCA Annual Report, 1982 PCA Annual Report, 1984 Annual Report, reproduced from copies in the collection of the National Library. The 1983 PCA Annual Report was reportedly unavailable.

[115] EXECUTIVE ORDER No. 292 (July 25, 1987).

[116] PRESIDENTIAL DECREE No. 2029 entitled "Defining Government-Owned or Controlled Corporations and Identifying their Role in National Development" (February 4, 1986).

Supreme Court E-Library

by special law as well as those through the Corporation Code[.]"[117] Section 2 of P.D. No. 2029 reads:

> Section 2. *Definition.* A government-owned or controlled corporation is a stock or a non-stock corporation, whether performing governmental or proprietary functions, which is directly chartered by a special law or if organized under the general corporation law is owned or controlled by the government directly, or indirectly through a parent corporation or subsidiary corporation, to the extent of at least a majority of its outstanding capital stock or of its outstanding voting capital stock;
>
> Provided, that a corporation organized under the general corporation law under private ownership at least a majority of the shares of stock of which were conveyed to a government financial institution, whether by a foreclosure or otherwise, or a subsidiary corporation of a government corporation organized exclusively to own and manage, or lease, or operate specific physical assets acquired by a government financial institution in satisfaction of debts incurred therewith, and which in any case by enunciated policy of the government is required to be disposed of to private ownership within a specified period of time, shall not be considered a government-owned or controlled corporation before such disposition and even if the ownership or control thereof is subsequently transferred to another government-owned or controlled corporation;
>
> Provided, further, that a corporation created by special law which is explicitly intended under that law for ultimate transfer to private ownership under certain specified conditions shall be considered a government-owned or controlled corporation, until it is transferred to private ownership; and
>
> Provided, finally, that a corporation that is authorized to be established by special law, but which is still required under that law to register with the Securities and Exchange Commission in order to acquire a juridical personality, shall not on the basis of the special law alone be considered a government-owned or controlled corporation. (underscoring supplied)

Under such conceptual framework, UCPB suited the classification of a government-owned and controlled corporation.

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[117] *Id.*, 2nd whereas clause.

UCPB, then known as the First United Bank, was acquired by the government in 1975 by virtue of P.D. No. 755 and the "Agreement for the Acquisition of a Commercial Bank for the benefit of the Coconut Farmers" dated May 25, 1975 entered into by the PCA and Cojuangco using coco levy funds to serve as the repository of the coco levy funds and to administer said public funds. Under said Agreement, the PCA bought 72.2% of the UCPB from Cojuangco who retained for himself 7.2% as "payment for management services." On this score alone, Cojuangco indeed exercised management authority from 1975 to 1980 and from 1981 to 1985.

Given the extent of government ownership of its shares of stock, the public nature of the funds in its control, the purpose for which it was acquired, and the manner of its acquisition, UCPB was thus a government-owned and controlled corporation (GOCC). Cojuangco, as then President and Member of the Board of Directors of UCPB, was thus, indeed, a public officer during the Marcos Administration.

In light of the admissions as discussed, it was no longer incumbent upon the Republic to prove that Cojuangco was an officer and member of the governing boards of these bodies at that time. Cojuangco could, of course, it bears reiteration, have adduced evidence to contradict, on grounds allowed by the rules, his admissions in order to otherwise show that he was not connected to these entities during the Marcos regime. But he did not.

It having been established that Cojuangco was a Director of PCA, a government entity, and a President and Director of UCPB, a GOCC, his act of acquiring loans and credit advances from UCPB and the CIIF Oil Mills in order to purchase the subject SMC shares through the various Cojuangco companies was **in violation of his fiduciary duty as director.**

"Fiduciary duty" has been defined as "a duty to act for someone else's benefit, while subordinating one's personal interests to that of the other person. It is the highest standard of duty implied

Supreme Court E-Library

by law.[118] "Fiduciary" connotes a very broad term embracing both technical relations and those informal relations which exist wherever one person trusts in or relies upon another; one founded on trust or confidence reposed by one person in the integrity and fidelity of another. Such relationship arises whenever confidence is reposed on one side, and domination and influence result on the other; the relation can be legal, social, domestic, or merely personal.[119] It is a relation subsisting between two persons in regard to a business, contract, or piece of property, or in regard to the general business or estate of one of them, of such a character that each must repose trust and confidence in the other and must exercise a corresponding degree of fairness and good faith. Out of such a relation, the law raises the rule that neither party may exert influence or pressure upon the other, take selfish advantage of his trust, or deal with the subject-matter of the trust in such a way as to benefit himself or prejudice the other except in the exercise of the utmost good faith and with the full knowledge and consent of that other, business shrewdness, hard bargaining, and astuteness to take advantage of the forgetfulness or negligence of another being totally prohibited as between persons standing in such a relation to each other.[120]

The Court had, in *Gokongwei, Jr. v. Securities and Exchange Commission,*[121] the occasion to explain at length such fiduciary duty of a director of a corporation:

> Although in the strict and technical sense, directors of a private corporation are not regarded as trustees, **there cannot be any doubt that their character is that of a fiduciary insofar as the corporation and the stockholders as a body are concerned**. **As agents entrusted with the management of the corporation for the collective benefit of the stockholders, "they occupy a fiduciary relation, and in this sense the relation is one of trust**."

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[118] *BLACK'S LAW DICTIONARY* (6th Edition), p. 625.

[119] *Vide Matter of Heilman's Estate*, 37 Ill.App.3d 390, 345 N.E.2d 536, 540.

[120] *BLACK'S LAW DICTIONARY, supra* note 118.

[121] G.R. No. L-45911, April 11, 1979, 89 SCRA 336.

"The ordinary trust relationship of directors of a corporation and stockholders," according to *Ashaman v. Miller*, "is not a matter of statutory or technical law. It springs from the fact that directors have the control and guidance of corporate affairs and property and hence of the property interests of the stockholders. Equity recognizes that stockholders are the proprietors of the corporate interests and are ultimately the only beneficiaries thereof * * *.

Justice Douglas, in *Pepper v. Litton*, emphatically restated the standard of fiduciary obligation of the directors of corporations, thus:

A director is a fiduciary. ... Their powers are powers in trust. ... He who is in such fiduciary position cannot serve himself first and his cestuis second. ... He cannot manipulate the affairs of his corporation to their detriment and in disregard of the standards of common decency. He cannot by the intervention of a corporate entity violate the ancient precept against serving two masters ... He cannot utilize his inside information and strategic position for his own preferment. He cannot violate rules of fair play by doing indirectly through the corporation what he could not do so directly. **He cannot use his power for his personal advantage and to the detriment of the stockholders and creditors no matter how absolute in terms that power may be and no matter how meticulous he is to satisfy technical requirements. For that power is at all times subject to the equitable limitation that it may not be exercised for the aggrandizement, preference or advantage of the fiduciary to the exclusion or detriment of the cestuis.**

And in *Cross v. West Virginia Cent, & P. R. R. Co.*, it was said:

. . . A person cannot serve two hostile and adverse masters, without detriment to one of them. A judge cannot be impartial if personally interested in the cause. No more can a director. Human nature is too weak for this. Take whatever statute provision you please giving power to stockholders to choose directors, and in none will you find any express prohibition against a discretion to select directors having the company's interest at heart, and it would simply be going far to deny by mere implication the existence of such a salutary power.[122] (emphasis and underscoring supplied)

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[122] *Id.* at 367-368.

Supreme Court E-Library

Since at the time Cojuangco and the Cojuangco companies obtained loans from UCPB/CIIF Oil Mills to purchase SMC shares, Cojuangco was concurrently President and/or Director of the UCPB and PCA, he is considered to have had a fiduciary duty towards these entities, especially with respect to UCPB which, at that time, was a GOCC, and the PCA, the government entity tasked to oversee the entire coconut industry including the coco levy fund.

Furthermore, in view of the public nature of the funds involved, Cojuangco became a fiduciary not only of the **entities** involved but also of the **public funds**. As stated in *Gokongwei*, a director cannot serve himself first and his *cestuis* (the corporations and the public) second or use his power as such director or officer for his personal advantage or preference. Since the avowed purpose for which UCPB was acquired by the government was to administer the coco levy funds to provide them with "readily available credit facilities at preferential rates," Cojuangco, **in buying the SMC shares** through the loans he obtained from UCPB and CIIF Oil Mills **for his own benefit**, **violated his fiduciary obligations by *self-dealing*,** an act proscribed under the Corporation Code, Sections 31 and 34 of which read:

Sec. 31. *Liability of directors, trustees or officers.*— Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation **or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.**

When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.

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Sec. 34. ***Disloyalty of a director.*** **— Where a director, by virtue of his office, acquires for himself a business opportunity which should belong to the corporation, thereby obtaining profits to the prejudice of such corporation, he must account to the latter for all such profits by refunding the same,** unless his act has been ratified by a vote of the stockholders owning or representing at least two-thirds (2/3) of the outstanding capital stock. This provision shall be applicable, notwithstanding the fact that the director risked his own funds in the venture. (emphasis supplied)

Indeed, given that SMC may be considered a profitable business and, therefore, no prejudice in terms of loss might have been suffered by UCPB, CIIF Oil Mills or the coconut farmers for whom Cojuangco was deemed to hold the funds in trust, still his acquisition of the SMC shares amounted to his **depriving the coconut farmers** of a business opportunity which rightfully belonged to them, *i.e.*, access to the coco levy funds, and his gaining profits therefrom to the **detriment of the intended beneficiaries**. By no stretch of one's imagination can it be assumed that the purchase of SMC shares directly or even indirectly redounded to the benefit of the coconut farmers. Under Section 9 of P.D. No. 961, what UCPB was, at most, authorized to invest in were shares of stocks in corporations engaged in businesses *related to the coconut and palm oil industry* of which SMC, then primarily engaged in the food and beverage industries, may not be considered covered. The provision adverted to reads:

Section 9. *Investments For the Benefit of the Coconut Farmers.* Notwithstanding any law to the contrary, the bank acquired for the benefit of the coconut farmers under P.D. 755 is hereby given full power and authority **to make investments in the form of shares of stock in corporations organized for the purpose of engaging in the establishment and the operation of industries and commercial activities and other allied business undertakings relating to the coconut and other palm oils industry in all its aspects and the establishment of a research into the commercial and industrial uses of coconut and other palm oil industry**. For that purpose, the Authority shall, from time to time, ascertain how much of the collections of the Coconut Consumers Stabilization Fund and/or the Coconut Industry Development Fund is not required

Supreme Court E-Library

to finance the replanting program and other purposes herein authorized and such ascertained surplus shall be utilized by the bank for the investments herein authorized. (emphasis and underscoring supplied)

But even assuming *arguendo* that UCPB's investing in SMC shares would have been allowed under the above provision, still, such investments could only have been made for and in behalf of the coconut farmers, and NOT for and in behalf of a single individual or Cojuangco alone.

As President and Director of UCPB, Cojuangco was also violating Section 83 of Republic Act No. 337 of the General Banking Law, as amended by P.D. No. 1795, the law in force at that time which prohibited directors and/or officers of a banking institution from either directly or indirectly borrowing any of the deposits of funds of such banks *except* with the written approval of all directors of the bank. Said section states:

Sec. 83. **No director or officer of any banking institution shall, either directly or indirectly, for himself or as the representative or agent of other, borrow any of the deposits of funds of such banks, nor shall he become a guarantor, indorser, or surety for loans from such bank to others, or in any manner be an obligor for money borrowed from the bank or loaned by it, except with the written approval of the majority of the directors of the bank, excluding the director concerned**. Any such approval shall be entered upon the records of the corporation and a copy of such entry shall be transmitted forthwith to the Superintendent of Banks. The office of any director or officer of a bank who violates the provisions of this section shall immediately become vacant and the director or officer shall be punished by imprisonment of not less than one year nor more than ten years and by a fine of not less than one thousand nor more than ten thousand pesos.

The Monetary Board may regulate the amount of credit accommodations that may be extended, directly or indirectly, by banking institutions to their directors, officers, or stockholders. **However, the outstanding credit accommodations which a bank may extend to each of its stockholders owning two percent (2%) or more of the subscribed capital stock, its directors, or its officers, shall be limited to an amount equivalent to the respective outstanding deposits** and book value of the paid-in capital

Supreme Court E-Library

contribution in the bank: Provided, however, That loans and advances to officers in the form of fringe benefits granted in accordance with rules and regulations as may be prescribed by the Monetary Board shall not be subject to the preceding limitation.[123] (emphasis supplied)

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[123] Said section has been incorporated into the present General Banking Law of 2000 as Sec. 36, *viz.*:

> **Sec. 36.** ***Restriction on Bank Exposure to Directors, Officers, Stockholders and Their Related Interests.***— No director or officer of any bank shall, directly or indirectly, for himself or as the representative or agent of others, borrow from such bank nor shall he become a guarantor, endorser or surety for loans from such bank to others, or in any manner be an obligor or incur any contractual liability to the bank except with the written approval of the majority of all the directors of the bank, excluding the director concerned: *Provided*, That such written approval shall not be required for loans, other credit accommodations and advances granted to officers under a fringe benefit plan approved by the Bangko Sentral. The required approval shall be entered upon the records of the bank and a copy of such entry shall be transmitted forthwith to the appropriate supervising and examining department of the Bangko Sentral.
>
> Dealings of a bank with any of its directors, officers or stockholders and their related interests shall be upon terms not less favorable to the bank than those offered to others.
>
> After due notice to the board of directors of the bank, the office of any bank director or officer who violates the provisions of this Section may be declared vacant and the director or officer shall be subject to the penal provisions of the New Central Bank Act.
>
> The Monetary Board may regulate the amount of loans, credit accommodations and guarantees that may be extended, directly or indirectly, by a bank to its directors, officers, stockholders and their related interests, as well as investments of such bank in enterprises owned or controlled by said directors, officers, stockholders and their related interests. However, the outstanding loans, credit accommodations and guarantees which a bank may extend to each of its stockholders, directors, or officers and their related interests, shall be limited to an amount equivalent to their respective unencumbered deposits and book value of their paid-in capital contribution in the bank: *Provided, however,* That loans, credit accommodations and guarantees secured by assets considered as non-risk by the Monetary Board shall be excluded from such limit: *Provided, further*, That loans, credit accommodations and advances to officers in the form of fringe benefits granted in accordance with rules as may be prescribed by the Monetary Board shall not be subject to the individual limit.

Supreme Court E-Library

Cojuangco and the Cojuangco companies having admitted in their joint Pre-Trial Brief that the SMC shares were actually purchased with proceeds from loans and credit advances from UCPB and the CIIF Oil Mills, and having foregone the opportunity during trial to show that a written authority from the UCPB's Board of Directors was secured before contracting said loans, ineluctably, **Cojuangco violated the old banking law.** That President Marcos issued Letter of Instructions (LOI) No. 926 (September 3, 1979) that paved the way for the acquisition of UCPB as the bank that would administer the lending of coco levy funds and which, in effect, exempted borrowings from the UCPB from the usual loan restrictions, is of no moment. Section 4 of LOI No. 926 provides:

> Sec. 4. Financial Borrowings — **All financial borrowings of the private corporation authorized to be organized as well as any Participating Mill to finance their respective capital expenditures including purchase of spare parts and inventories shall be expeditiously and promptly approved, and such borrowings are hereby declared exempt from restrictions/ limitations**: on simple borrower's limitations; and on loans to corporations with interlocking directors, officers, stockholders, related interests and subsidiaries and affiliates, **it being understood that such lendings are in effect made to the coconut industry as a whole and not to any particular individual or entity**. (emphasis and underscoring supplied)

Clearly, the exemption granted in LOI No. 926 only extended to *corporate* borrowings, not to individual borrowings.

UNDISPUTED FACTS[124] culled by the Sandiganbayan, to which Cojuangco and Cojuangco companies did not object, yield to the following conclusions: (i) It was Cojuangco *alone* who **obtained** the loans; (ii) it was Cojuangco *alone* who **purchased**

The Monetary Board shall define the term *"related interests."*

The limit on loans, credit accommodations and guarantees prescribed herein shall not apply to loans, credit accommodations and guarantees extended by a cooperative bank to its cooperative shareholders.

[124] *Supra*.

Supreme Court E-Library

or **acquired** the subject SMC shares; and (iii) the subject SMC shares were **registered**, however, not only in the name of Cojuangco but also in the name of the Cojuangco companies.

In his Answer, Cojuangco admits that he is the *owner* of the SMC shares registered in the names of Primavera Farms, Inc., Silver Leaf Plantations, Inc., and Meadowlark Plantations, Inc., wherein 99.6% of the corporations' shares were held in trust by Atty. Jose C. Concepcion under three separate "Declarations of Trust and Assignment of Subscription." Likewise admitted therein is the fact that Atty. Concepcion and other registered stockholders of the three Cojuangco companies executed Voting Trust Agreements in favor of Cojuangco representing almost half[125] of the total subject SMC shares. Another admitted fact is that the other Cojuangco companies were incorporated *in Cojuangco's behalf* by the ACCRA Law Office.[126]

That the other purportedly registered stockholders of the Cojuangco companies, like Atty. Concepcion, did not stake a claim over the SMC shares bears noting. That they were not alerted thereby enfeebles any claim of ownership.[127]

These circumstances bolster the Sandiganbayan's judicial notice of case law [Undisputed Facts, Item No. 5] on the presence of indications that the Cojuangco companies are "dummies" or manipulated instruments or repositories of wealth.[128] And whatever machinations of incorporation and instrumentalities of declarations were employed, the inescapable conclusion remains that the subject SMC shares were funneled into the Cojuangco companies. Hence, per case law and as confirmed by the admissions and the records of the proceedings, the Cojuangco companies are 'dummies' or manipulated instruments.

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[125] 10,763,185 out of the 27,198,545 SMC shares at the time of sequestration.

[126] *Vide* Answer, *rollo*, (G.R. No. 180702), pp. 177-179.

[127] *Vide Republic v. Estate of Hans Menzi*, *supra* note 84 at 58-59.

[128] *Supra* note 7, citing *Republic v. Sandiganbayan*, 240 SCRA 376 (1995).

Supreme Court E-Library

Since Cojuangco admitted having acquired the loans for himself, albeit through various dummy corporations, and absent written authority from UCPB's then Board of Directors, it becomes evident that **he violated the restrictions on bank exposure under the old banking law**. The issuance of the LOI by then President Marcos, rather than exempting from the restrictions imposed on loans being acquired by officers and directors of banks, only underscored the obvious: that Cojuangco was a close ally of Marcos and gained undue advantage due to such close relationship; and that UCPB was primarily acquired to siphon off the coco levy funds.

Significantly, as the above-quoted Section 4 of LOI No. 926 itself provides, the borrowings or loans were intended "in effect" for the benefit of the coconut industry and the coconut farmers as a whole and NOT for the benefit of any particular individual or entity.

IN SUM, in acquiring the loans for himself while he was an officer of UCPB, Cojuangco **VIOLATED** not only **HIS FIDUCIARY OBLIGATION** under the Corporation Code and the **PROHIBITION ON SELF-DEALING** under the banking law, but also the **PROVISION IN THE LOI ON HOW THE LOANS ARE TO BE ADMINISTERED**. The avowed legal intention or policy behind the LOI in fact goes against factual reality, as even the financial borrowings were supposedly intended "to finance their [Participating Mills'] capital expenditures."

It having been established that Cojuangco engaged in prohibited conflict-of-interest transactions by buying the SMC shares using coco levy funds being administered by the UCPB and CIIF Oil Mills for his own benefit, it follows that a **constructive trust** was formed in favor of the coconut farmers who should have benefited from such funds.

The Civil Code provides:

Art. 1455. When any trustee, guardian, or other person **holding a fiduciary relationship uses trust funds for the purchase of property and causes the conveyance to be made to him or to a third person, a trust is established by operation of law in favor**

of the person to whom the funds belong. (emphasis and underscoring supplied)

A constructive trust is "a right of property, real or personal, held by one party for the benefit of another; that there is a fiduciary relation between a trustee and a *cestui que trust* as regards certain property, real, personal, money or choses in action."[129] That under Article 1455 there must be a breach of fiduciary relation and profit or gain resulting therefrom in order for a constructive trust to be created in favor of that legally entitled to it, *Huang v. Court of Appeals*[130] underscores*:*

A constructive trust is imposed where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it. The duty to convey the property arises because it was acquired through **fraud, duress, or abuse of confidence, undue influence** or mistake or **breach of fiduciary duty** or through the wrongful disposition of another's property.[131] (emphasis supplied)

Fraud in this kind of trust in fact need not even be present. The landmark case of *Severino v. Severino*[132] enlightens:

A receiver, trustee, attorney, agent, or any other person occupying fiduciary relations respecting property or persons, is utterly disabled from acquiring for his own benefit the property committed to his custody for management. **This rule is entirely independent of the fact whether any fraud has intervened. No fraud in fact need be shown, and no excuse will be heard from the trustee.** It is to avoid the necessity of any such inquiry that the rule takes so general a form. **The rule stands on the moral obligation to refrain from placing one's self in positions which ordinarily excite conflicts between self-interest and integrity. It seeks to remove the temptation that might arise out of such a relation to serve one's self-interest at the expense of one's integrity and duty to another,**

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[129] *Salao v. Salao*, G.R. No. L-26699, March 16, 1976, 70 SCRA 65.

[130] G.R. No. 108525, September 13, 1994, 236 SCRA 420.

[131] *Id.* at 428.

[132] 4 Phil. 343 (1923), citing *Gilbert vs. Hemston*, 79 Mich. 326.

Supreme Court E-Library

by making it impossible to profit by yielding to temptation. It applies universally to all who come within its principle. (emphasis and underscoring supplied)

In the present case, whether Cojuangco committed fraud is no longer material, what is material and must be established being the existence of the fiduciary relation and the use of such position and the attendant abuse of the confidence reposed in him by virtue of that position which results in the constructive trust.

Even assuming *arguendo* that fraud is material, the rule on the burden of proof of fraud, as the majority insists, does not apply in the present case. Authorities on evidence cite the existence of a fiduciary relation as an exception:

The law, in the absence of the existence of any fiduciary relation, never presumes fraud, dishonesty, or bad faith; on the contrary, the presumption is in favor of good faith and honesty until the contrary appears x x x However, **when a fiduciary relation exists between the parties to a transaction, the burden of proof of its fairness is upon the fiduciary. He must show that there was no abuse of confidence, that he has acted in good faith, and the act by which he is benefited was the free, voluntary, and independent act of the other party, done with full knowledge of its purpose and effect**. Examples of such relationships may be seen in the case of husband and wife, attorney and client, **directors of a corporation and the corporation**, or any other relationship of an intimate and fiduciary character. A fiduciary seeking to profit by a transaction with the one who confided in him has the burden of showing that he communicated to the other not only the fact of his interest in the transaction, but all information he had which it was important for the other to know in order to enable him to judge the value of the property. The formal creation of a fiduciary relationship is not essential to the application of this rule. The principles apply to all cases in which confidence is reposed by one party in another, and the trust or confidence is accepted under circumstances which show that it was founded on intimate, personal, and business relations existing between the parties, which give the one advantage or superiority over the other, and impose the burden of proving that

Supreme Court E-Library

the transaction was fair and just on the person acquiring the benefit.[133] (emphasis and underscoring supplied)

Since Cojuangco was a fiduciary, the burden of evidence on the fairness of the questionable transactions was shifted to him. He failed to discharge this burden.

In other words, contrary to the view of the majority, it was not incumbent upon the Republic to adduce evidence on the particular details of the loans and credit advances for it was Cojuangco's burden to establish the regularity of these transactions. I am not "second-guessing," as the majority points out, for I am justified to deem the irregularity or illegality thereof as established after Cojuangco refused to discharge his burden. The intentional concealment of facts as to render secretive the assailed loan transactions entered into by a fiduciary must be, as enunciated by the above-cited rule, taken against Cojuangco, he being the fiduciary.

VIOLATION OF PENAL LAWS

Aside from the violating the above-enumerated laws in purchasing the SMC shares, Cojuangco also violated penal laws in his capacity as a **public officer.**[134]

First, Section 3(i) of Republic Act No. 3019 prohibits a public officer from becoming interested for personal gain, or having a material interest in any transaction or act requiring the approval

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[133] Francisco, *THE REVISED RULES OF COURT IN THE PHILIPPINES* (1997 Edition), Vol. VII, Part II, pp. 15-16, citing 20 Am. Jur. 147.

[134] Under REPUBLIC ACT No. 3019, a "public officer" includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government.

Pursuant to the Title 7, Book II of the REVISED PENAL CODE, a "public officer" is "any person who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent or subordinate official, of any rank or class, shall be deemed to be a public officer."

Supreme Court E-Library

of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group.

Second, Article 216[135] of the Revised Penal Code prohibits public officers from directly or indirectly, becoming interested in any contract or business in which it is his official duty to intervene.

Cojuangco's participation in the performance of public functions in a branch of the government was through his appointment by then President Marcos to the identified positions. Clearly, whether by the definition under R.A. 3019 or the Revised Penal Code, Cojuangco is deemed to be a public officer.

Cojuangco, in buying the SMC shares out of loan proceeds he obtained from UCPB and CIIF Oil Mills, of which he was an officer, violated the cited provision of the Graft and Corrupt Practices Act, akin to the act of self-dealing that is prohibited under Sections 31 and 34 of the Corporation Code. Further, under the last paragraph of Section 3(i), there is the presumption of interest for personal gain.[136] Consequently, Cojuangco ought to have proven that he did not gain personally from the loan transactions which involved UCPB, a GOCC, and the PCA, a government body.

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[135] ART. 216. *Possession of prohibited interest by a public officer.* — The penalty of *arresto mayor* in its medium period to *prision correccional* in its minimum period, or a fine ranging from 200 to 1,000 pesos, or both, shall be imposed upon a public officer who, directly or indirectly, shall become interested in any contract or business in which it is his official duty to intervene.

This provision is applicable to experts, arbitrators and private accountants who, in like manner, shall take part in any contract or transaction connected with the estate or property in the appraisal, distribution or adjudication of which they shall have acted, and to the guardians and executors with respect to the property belonging to their wards or estate. (underscoring supplied)

[136] Interest for personal gain shall be presumed against these public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transaction or acts by the board, panel or group to which they belong.

Supreme Court E-Library

With respect to Article 216 of the Revised Penal Code, Cojuangco had a hand in how the funds were to be utilized and in choosing the recipients of the loans and credit advances. For him to purchase SMC shares with proceeds from loans sourced from the coconut levy funds was a clear violation of Article 216. What is proscribed is the mere possession of the prohibited interest. It does not matter whether he actually approved the transaction or actually intervened in the contract or business. Moreover, proof that actual fraud was committed against the government is not required, for the act is punished because of the possibility that fraud may be committed or that the officer may place his personal interest above that of the government.[137]

The foregoing determinations notwithstanding, the majority posits that the Republic still needed to adduce competent evidence to substantiate the elemental allegations of the complaint. It declares that Cojuangco, *et al.* "did not admit that the acquisition of the Cojuangco block of SMC shares had been illegal, or made with public funds." The phraseology, however, is inaccurate in two respects. *First*, the statement is tagged with an erroneous predicate, for the premise draws one to interject that Cojuangco, *et al.* could not admit a conclusion of law. *Second*, the statement fails to squarely consider all relevant facts that need not be proven by evidence which the Court determined in arriving at its legal conclusion.

The **categories of facts that need not be proven by evidence** were enumerated by this Court in one case that expounded on Section 1 of Rule 131 of the Rules of Court, as follows:

> *Burden of proof*. — Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his **claim or defense** by the amount of evidence required by law.

Obviously, the burden of proof is, in the first instance, with the plaintiff who initiated the action. **But in the final analysis, the party upon whom the ultimate burden lies is to be determined by the pleadings, not by who is the plaintiff or the defendant**.

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[137] *Vide U.S. v. Udarbe*, 28 Phil. 383 (1913).

Supreme Court E-Library

The test for determining where the burden of proof lies is to ask which party to an action or suit will fail if he offers no evidence competent to show the facts averred as the basis for the relief he seeks to obtain, and based on the result of an inquiry, which party would be successful if he offers no evidence.

In ordinary civil cases, **the plaintiff has the burden of proving the material allegations of the complaint which are denied by the defendant,** and **the defendant has the burden of proving the material allegations in his case where he sets up a new matter**. All facts in issue and relevant facts must, as a general rule, be proven by evidence except the following:

(1) Allegations contained in the complaint or answer immaterial to the issues.

(2) Facts which are admitted or which are not denied in the answer, provided they have been sufficiently alleged.

(3) Those which are the subject of an agreed statement of facts between the parties; as well as those admitted by the party in the course of the proceedings in the same case.

(4) Facts which are the subject of judicial notice.

(5) Facts which are legally presumed.

(6) Facts peculiarly within the knowledge of the opposite party.

The effect of a presumption upon the burden of proof is to create the need of presenting evidence to overcome the *prima facie* case created thereby which if no proof to the contrary is offered will prevail; it does not shift the burden of proof.[138] (italics in the original; underscoring supplied)

BY WAY OF SUMMATION, the following **relevant facts/ circumstances that need not be proven by evidence**, as gathered from the foregoing discussion which is anchored on the immediately-cited listing of legal bases for considering these facts as established, REBUT THE ARGUMENT THAT THERE IS NO EVIDENCE AT ALL TO SUPPORT THE REPUBLIC'S CAUSE OF ACTION.

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[138] *Republic v. Vda. De Neri*, *supra* note 82 at 692-693.

Supreme Court E-Library

1. The identity of the subject SMC shares, referring to a total of 27,198,545 shares of stocks (at the time of sequestration in 1989) representing approximately 20% of the outstanding shares.

2. The sale of the subject SMC shares was entered into in 1983.

3. The sellers were Ayala Corporation and other corporations and individuals.

4. The lone buyer was Eduardo Cojuangco, Jr.

5. In purchasing the SMC shares, Cojuangco used proceeds of loans

6. It was Cojuangco alone who obtained the loans.

7. The proceeds of loans refer to borrowings from CIIF Oil Mills and UCPB.

8. No private funds were shown to have been used to purchase the SMC shares.

9. The coconut levy funds are not only clearly affected with public interest but also, in fact, *prima facie* public funds. The same holds true with corporations formed and organized from coconut levy funds and all assets acquired therefrom, they being fruits of funds with public roots.

10. Absent any contrary evidence, the subject SMC shares remained public in character.

11. Circumstances indicate that the Cojuangco companies are 'dummies' or manipulated instruments.

12. The SMC shares have been registered not only in Cojuangco's name but also in the name of defendant Cojuangco Companies.

13. Cojuangco is the owner of the SMC shares registered in the names of Primavera Farms, Inc., Silver Leaf Plantations, Inc., and Meadowlark Plantations, Inc., wherein 99.6% of the corporations' shares were held in trust by Atty. Jose C. Concepcion under three separate "Declarations of Trust and Assignment of Subscription."

14. Atty. Jose Concepcion of ACCRA Law Office and other registered stockholders of the three Cojuangco companies executed Voting Trust Agreements in favor of Cojuangco, representing almost half[139] of the total subject SMC shares.

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[139] 10,763,185 out of the 27,198,545 SMC shares at the time of sequestration.

Supreme Court E-Library

15. The other Cojuangco companies, aside from the three earlier named, were incorporated in Cojuangco's behalf by the ACCRA Law Office.[140]

16. The other purportedly registered stockholders of the Cojuangco companies did not stake a claim over the SMC shares.

17. On February 25, 1986, Cojuangco left the Philippines in the company of former President Ferdinand Marcos.

18. The PCGG Rules and Regulations define "ill-gotten wealth" as any asset, property, business enterprise or material possession of persons within the purview of Executive Orders Nos. 1 and 2, acquired by them directly, or indirectly thru dummies, nominees, agents, subordinates and/or business associates by any of the [various enumerated] means[141] or similar schemes.

19. The year 1983 forms part of the period of the Marcos administration.

20. Cojuangco was President and Member of the Board of Directors of the UCPB, and Director of the Philippine Coconut Authority (PCA), *inter alia*, during the Marcos administration.

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[140] *Vide* Answer, *rollo*, (G.R. No. 180702), pp. 177-178.

[141] (1) Through misappropriation, conversion, misuse or malversation of public funds or raids on the public treasury;

(2) Through the receipt, directly or indirectly, of any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the official concerned.

(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 combination and/or by the issuance, promulgation and/or implementation of decrees and 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.

Supreme Court E-Library

21. UCPB was a public corporation in 1983.[142]

22. The PCA Board of Directors had been expressly given vast authority in managing and disbursing the coconut levy funds including the corporations formed and organized therefrom and all assets acquired therefrom, such as all CIIF Oil Mills.

23. Case law provides that a director occupies a fiduciary relation as he cannot serve himself first and his *cestuis* second. He cannot use his power for his personal advantage and to the detriment of the stockholders and creditors.[143]

24. Sections 31 and 34 of the Corporation Code prohibit acts of "self-dealing."

25. Section 9 of Presidential Decree No. 961 limits the authority to make UCPB investments only in the establishment and operation of industries and commercial activities and other allied business undertakings relating to the coconut and other palm oils industry in all its aspects and the establishment of research into the commercial and industrial uses of coconut and other palm oil industry.

26. Section 83 of the then General Banking Law provides the general rule that prohibits directors and officers of a banking institution from directly or indirectly borrowing any of the deposits of funds of such banks.

27. The exemption granted under Letter of Instructions No. 926 states that loans sourced from the coconut levy funds are extended only to corporate borrowings, not to individual borrowings.

28. The rule on constructive trust under Article 1455 of the Civil Code prohibits a trustee from acquiring for his own benefit the property under his management. Case law provides that fraud need not be shown.[144]

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[142] Given the extent of government ownership of its shares of stock, the public nature of the funds in its control, the purpose for which it was acquired, and the manner of its acquisition, UCPB was thus a government-owned and controlled corporation (GOCC). Meanwhile, PCA was a government entity. Considering the foregoing and in light of the earlier admissions, Cojuangco was indeed a public officer in 1983, it having been established that Cojuangco was a PCA Director and a UCPB President and Director.

[143] Citing *Gokongwei, Jr. v. Securities and Exchange Commission*, No. L-45911, April 11, 1979, 89 SCRA 336, *inter alia.*

[144] Citing *Severino v. Severino*, *supra* note 132, *inter alia.*

Supreme Court E-Library

29. No evidence was shown to discharge the burden of Cojuangco, as a fiduciary, to demonstrate that the loan transactions were regularly entered into.

30. Section 3(i) of Republic Act No. 3019 prohibits a public officer from becoming interested for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group.

31. Article 216[145] of the Revised Penal Code prohibits public officers from directly or indirectly, becoming interested in any contract or business in which it is his official duty to intervene.

IN SUM, since at the time of the purchase of the subject SMC shares, Cojuangco, a trusted close associate of Former President Marcos, was a director and corporate officer of the PCA and UCPB, hence, he was considered a fiduciary of the coconut levy funds, its derivatives and assets, which are public in character being administered by said entities. His use for his *personal* benefit of the very same funds entrusted to him, which was released to him through illegal and improper machination of loan transactions, and his contravention of the then existing corporation laws and laws restricting a bank's exposure to its director or officers indicate a clear violation of such fiduciary duty. These shares which respondents acquired using the proceeds from such loans do not thus pertain to them but to the UCPB and the CIIF Oil Mills pursuant to a constructive trust, and following Section 31 of the Corporation Code, said shares should be reconveyed to the Republic in trust for the coconut farmers.

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[145] ART. 216. *Possession of prohibited interest by a public officer.* — The penalty of *arresto mayor* in its medium period to *prision correccional* in its minimum period, or a fine ranging from 200 to 1,000 pesos, or both, shall be imposed upon a public officer who, directly or indirectly, shall become interested in any contract or business in which it is his official duty to intervene.

This provision is applicable to experts, arbitrators and private accountants who, in like manner, shall take part in any contract or transaction connected with the estate or property in the appraisal, distribution or adjudication of which they shall have acted, and to the guardians and executors with respect to the property belonging to their wards or estate.

Supreme Court E-Library

WHEREFORE, in light of all the foregoing, I **DISSENT** from the majority opinion as I **PROFFER** the following dispositions:

The Sandiganbayan's assailed Resolutions of October 8, 2003 and June 24, 2005 in G.R. No. 169203 are AFFIRMED WITH MODIFICATION in that all the restrictions imposed in the dispositive portion thereof are DELETED; the Resolution of December 10, 2004 in G.R. No. 166859 is AFFIRMED; and the Decision of November 28, 2007 in G.R. No. 180702 is REVERSED and SET ASIDE.

The Cojuangco, *et al.* Block of San Miguel Corporation shares of stock totalling 27,198,545 as of the date of sequestration thereof, together with all dividends declared, paid and issued thereon, as well as any increments thereto and rights arising therefrom, are DECLARED owned by the Government in trust for all the coconut farmers and ORDERED RECONVEYED to the Government. For the purpose of determining the total current valuation of these shares, the dividends accruing therefrom and increments thereto,[146] the case is REMANDED to the Sandiganbayan which is ordered to carry out the same with dispatch.

DISSENTING OPINION

BRION, *J.*:

This Opinion refers to three consolidated petitions — G.R. No. 166859, G.R. No. 169203, and G.R. No. 180702 — involving related issues raised in the Sandiganbayan Civil Case No. 0033-F. I dissent in light of the gross negligence the counsel for the Republic committed in the course of the handling of the case — a circumstance that denied the Republic its day in court in a claim for recovery that involves an approximate present-day value of ₱84.56 billion or 5.49% of the 2010 entire national budget. Thus, I vote to grant the petition for purposes of the remand of the case for hearing on the merits through competent counsels whose integrity are beyond question.

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[146] In conformity with *Cojuangco v. Sandiganbayan*, G.R. No. 183278, April 24, 2009, 586 SCRA 790.

Supreme Court E-Library

I. BACKGROUND FACTS

On July 31, 1987, the petitioner Republic of the Philippines (*Republic*) filed a complaint with the Sandiganbayan, entitled *Republic v. Eduardo M. Cojuangco, et al.* and docketed as **Civil Case No. 0033**. The complaint, which named 59 other defendants, was for the recovery of assets and other properties that were allegedly ill-gotten.[1]

The complaint underwent amendments and the final version — the *Third Amended Complaint (Subdivided) [Re: Acquisition of San Miguel Corporation (SMC)]* — was filed on May 19, 1995.[2] On March 24, 1999, the Sandiganbayan allowed Civil Case No. 0033 to be subdivided into eight complaints, each relating to different transactions and assets. **Civil Case No. 0033-F** impleaded as defendants the private respondents Eduardo M. Cojuangco, Jr. (*Cojuangco*), 11 other individuals, and 71 corporations. The properties sought to be recovered were two blocks of SMC shares, generally described as follows:

(1) 33,133,266 SMC shares, labeled for convenience as the ***"Coconut Industry Investment Fund (CIIF) block"*** or ***"CIIF block"*** and registered in the names of 14 holding companies[3]; and

(2) 16,276,545 SMC shares, known for convenience as the ***"Cojuangco block"*** and registered in the names of the 44 respondent corporations.[4]

The CIIF block was subsequently awarded to the Republic by the Sandiganbayan in its Partial Summary Judgment promulgated on May 7, 2004.[5] This judgment lapsed to finality and was duly executed. Litigation on the Cojuangco block

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[1] *Rollo* (G.R. No. 180702), Volume I, p. 80.

[2] *Id.*, Volume II, pp. 516-538.

[3] *Id.* at 527-528.

[4] *Id.* at 528-531.

[5] Sandiganbayan Records, Volume 12, pp. 469-533.

Supreme Court E-Library

continued. This is the aspect of Civil Case No. 0033-F that is now before the Court through the present consolidated petitions.

A. The Complaint

In its complaint,[6] the Republic claimed that Cojuangco served as a public officer during the Marcos administration. In the course of this service, he acquired assets, funds, and other properties manifestly disproportionate to his lawful income. He allegedly had control over the coconut levy funds, which he misused to buy out the majority of the outstanding shares of SMC. In 1983, he bought most of the 20 million shares of Enrique Zobel in SMC. Allegedly, the Cojuangco block numbered **16,276,897 shares** and were worth $49,000,000. Some of these shares were placed in the names of Meadowlark Plantations, Inc. and Primavera Farms, Inc., which are also defendants in Civil Case No. 0033-F. The Articles of Incorporation of Meadowlark Plantations, Inc., Primavera Farms, Inc., and Silver Leaf Plantations, Inc. show that Atty. Jose C. Concepcion owned 99.6% of their outstanding stocks. His shares in these companies, however, were covered by three documents entitled ***Declaration of Trust and Assignment of Subscription,*** which he had executed in favor of an unnamed assignee. Additionally, Atty. Concepcion and four other stockholders of the three corporations executed ***Voting Trust Agreements*** in favor of Cojuangco. (Thus, the shares – while really belonging to an unknown assignee – were controlled and could be voted by Cojuangco.) The other defendant corporations (also respondents in the present petitions) are purportedly owned by interlocking directors who have admitted their status as mere "nominee" stockholders. The Republic claimed that the respondents used the funds advanced by six large coconut oil mills and 10 *copra* trading companies and borrowed as well from the United Coconut Planters Bank (*UCPB*) to purchase the holding companies and the SMC shares.[7]

The Republic alleged, too, that Cojuangco acquired the SMC shares in breach of public trust and by abuse of right and power,

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[6] *Rollo* (G.R. No. 108702), Volume I, pp.139-167.

[7] *Rollo* (G.R. No. 180702), Volume II, pp. 528-531.

Supreme Court E-Library

resulting in his unjust enrichment. Thus, it sought to recover the funds and properties, including their increments (such as cash and stock dividends and interests), as these are properties held under constructive trust for the Republic. It likewise prayed for the award of damages — actual, moral, temperate, nominal, and exemplary — and attorney's fees, litigation expenses, and treble judicial costs.[8]

B. The Answer

In his *Answer*,[9] Cojuangco denied that he engaged in any unlawful transaction and used coconut levy funds in acquiring the subject property. However, **he admitted:**

> **(1) that he was a Director of the Philippine Coconut Authority** (*PCA*), and a **Director and President of the UCPB; and**
>
> (2) that in 1983, he acquired from the Ayala Corporation approximately 20% of SMC's outstanding capital stock; these shares were registered in the name of Meadowlark Plantations, Inc., Silver Leaf Plantations, Inc., and Primavera Farms, Inc. He clarified that **he was the beneficial owner** of these shares.

Cojuangco filed counterclaims for actual and moral damages for the illegal sequestration of his shares. The respondent corporations also filed counterclaims for actual and moral damages on account of besmirched reputation, the illegal sequestering of their property, and the filing of an unfounded suit.[10]

C. The Pre-Trial

In his *Pre-Trial Brief* dated February 11, 2000,[11] Cojuangco identified the principal issues of the case as:

(1) Did the purchase price paid to the seller come from coconut levy funds?

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[8] *Id.* at 533-537.

[9] *Id.* at 591-609.

[10] *Id.* at 606-609, 621-623.

[11] *Id.* at 626-641.

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(a) May the proceeds of loans from UCPB be deemed as coming from coconut levy funds?

(2) Assuming that the price paid for the acquisition of the shares of stock came from coconut levy funds, are the shares of stock subject to be "returned and reconveyed" to plaintiff?[12]

The respondents also stated in their pre-trial brief that they intended to present the following evidence:

4.02 Herein defendants intend to present the following evidence:

x x x x x x x x x

(b) Proposed Exhibits _____, _____, _____,

Records of the United Coconut Planters Bank which would show borrowings of the companies listed in Annexes "A" and "B", or companies associated or affiliated with them, which were used **to source payment of the shares of stock** of the San Miguel Corporation subject of this case. [emphasis supplied]

4.03. Witnesses.

x x x x x x x x x

(b) A **representative of the United Coconut Planters Bank** who will testify in regard the **loans which were used to source the payment of the purchase price** of the SMC shares of stock.

(c) A **representative of the CIIF Oil Mills** who will testify in regard the loans or **credit advances which were used to source the payment of the purchase price** of the SMC shares of stock.[13] [emphasis ours]

The Republic filed its *Pre-Trial Brief* on May 15, 2000.[14] Among the documents attached (with emphasis supplied) were:

(1) Commission on Audit (*COA*) **report** on the UCPB dated 1986;

(2) Affidavits of Attys. Jose C. Concepcion, Florentino M. Herrera III, Teresita J. Herbosa, Teodoro D. Regala, Victoria

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[12] *Id.* at 633.

[13] *Id.* at 635-636.

[14] Sandiganbayan Records, Volume 6, pp. 29-891.

Supreme Court E-Library

de los Reyes, Manuel R. Roxas, Rogelio A. Vinluan, Eduardo U. Escueta, Franklin M. Drilon, stating that he or she was merely a nominee stockholder of some of the respondent corporations and that he or she did not have a proprietary interest in the shares of the respondent corporations;

(3) Blank Declarations of Trust and Assignment executed by some of the interlocking directors stating that their ownership of the shares of the respondent corporations were assigned to them nominally and that they were held for the benefit of an unnamed assignee;

(4) Voting Trust Agreements between Cojuangco as trustee and some of the interlocking directors of the respondent corporations as trustors over the SMC shares owned by respondents Silver Leaf Plantation, Meadowlark Plantations, Inc., and Primavera Farms, Inc.

(5) the **Memorandum of Agreement between Cojuangco and PCA**, executed on May 1975, wherein PCA purchased Cojuangco's options shares in First United Bank (*FUB*), which later became UCPB; and

(6) Statements of Assets and Liabilities of Cojuangco for the years 1973, 1976, 1978, and 1982; and

(7) the **Summation Analysis of Wealth and Income** of Cojuangco.

The **testimonies of the several potential witnesses** were also cited, among them, the COA officers regarding the COA reports, the interlocking directors of the respondent corporations, the Corporate Secretary of SMC, the Corporate Secretary and the Comptroller of UCPB, and the Chairman of the Securities and Exchange Commission (*SEC*).

D. Motions for Partial Summary Judgment

1. For the CIIF block of SMC Shares

On July 25, 2002, the Republic filed a *Motion for Judgment on the Pleadings and/or Summary Judgment over the CIIF*

Supreme Court E-Library

Block of SMC shares.[15] Cojuangco and the Coconut Producers Federation of the Philippines (*COCOFED, et al.*[16]), among others, filed an *Opposition* to the Republic's motion.[17]

In his Opposition,[18] Cojuangco continued to maintain his position that he had no direct interest over the CIIF shares, but opposed the motion based on procedural grounds.

COCOFED claimed ownership over the CIIF shares based on the provisions of Presidential Decree (*PD*) Nos. 961 and 1468, which authorize the free distribution of the investments made by UCPB, in the form of shares of stock, to the coconut farmers.[19] COCOFED, *et al.* claimed that since its members (farmers/producers) are the registered and/or beneficial owners of at least 51% of the capital stock of the CIIF Companies that wholly own the 14 Holding Companies, which, in turn, are the registered owners of the CIIF block of SMC shares, then they are the ultimate beneficial owners of these shares.[20]

On February 23, 2004, the Sandiganbayan issued an Order[21] outlining what it considers as admitted facts or facts that appear without substantial controversy, among others:

> (1) The CIIF is an accumulation of a portion of the Coconut Consumers Stabilization Fund (*CCSF*) and the Coconut Industry Development Fund (*CIDF*), which PD Nos. 961 and 1468 require to be utilized by the UCPB for investment, in the form of shares of stock in corporations engaged in industries and commercial activities relating to the coconut and palm

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[15] Sandiganbayan Records, Volume 9, pp. 205-247.

[16] Maria Clara L. Lobregat, Jose R. Eleazar, Jr., Domingo Espina, Jose Gomez, Celestino Sabate, Manuel del Rosario, Jose Martinez, Jr., and Eladio Chatto.

[17] Sandiganbayan Records, Volume 9, pp. 344-380, 394-417.

[18] Sandiganbayan Records, Volume 9, pp. 344-380.

[19] *Id.*, Volume 12, p. 495.

[20] *Id.* at 522.

[21] *Id.*, Volume 11, pp. 504-508.

Supreme Court E-Library

oils industry. The corporations where the CIIF has been invested are referred to as the CIIF Companies.

(2) Using the CIIF, the UCPB acquired controlling interests in the CIIF Companies using the CIIF.

(3) The UCPB distributed part of the investments made in the CIIF Companies to identified coconut farmers and retained part as CIIF Administrator. These coconut farmers are the registered controlling stockholders of the CIIF Companies.

(4) The 14 Holding Companies were incorporated to hold the SMC shares.

(5) All the outstanding capital stock of the 14 Holding Companies is owned by the CIIF Companies.

(6) UCPB, as CIIF Administrator, authorized the CIIF Companies to acquire 33, 133, 266 shares of stock of SMC.

(7) To finance the acquisition of the SMC shares, the fourteen (14) Holding Companies used their incorporating equity and borrowed funds from UCPB. The CIIF Companies also extended cash advances to the 14 Holding Companies.

(8) The 27% CIIF block of SMC shares are registered in the names of the 14 Holding Companies, which are wholly owned by the six CIIF Companies;

(9) Cojuangco disclaims any interest in the 27% CIIF Block of SMC shares.

Cojuangco filed his *Comment* to the Sandiganbayan Order, admitting that he has no direct interest over the CIIF block of SMC shares; but he claims indirect interest over these shares as a stockholder of SMC.[22]

On May 7, 2004, the Sandiganbayan granted the Republic's motion and ordered the reconveyance of the CIIF block of SMC shares to the government.[23]

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[22] Sandiganbayan Records, Volume 12, p. 78.

[23] *Id.*, Volume 12, pp. 469-533.

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The Sandiganbayan rejected the statutory bases of COCOFED's assertion of ownership. *First*, it declared as unconstitutional the provisions of PD Nos. 755, 961, and 1468 — that uniformly mandate that the CCSF and the CIDF "shall not be construed or interpreted, under any law or regulation, as special and/or fiduciary funds, or as part of the general funds of the national government" and that "the disbursements thereof as herein authorized for the benefit of the coconut farmers shall be owned by them in their private capacities"[24] — for violation of Section 2(1), Article XI(D) of the 1973 Constitution[25] (similar to Article IX-D, Section 2 of the 1987 Constitution[26]).

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[24] Sandiganbayan Records, Volume 12, pp. 517-521.

[25] Section 2. The Commission on Audit shall have the following powers and functions:

1. Examine, audit, and settle, in accordance with law and regulations, all accounts pertaining to the revenues and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, to the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned and controlled corporations; keep the general accounts of the government and, for such period as may be provided by law, preserve the vouchers pertaining thereto; and promulgate accounting and auditing rules and regulations including those for the prevention of irregular, unnecessary, excessive or extravagant expenditures or use of funds and property.

[26] Article IX-D Section 2(1) of the 1987 Constitution reads:

The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post- audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep

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Second, the Sandiganbayan, relying on *Republic v. COCOFED*[27] held that the registered owners of shares acquired with the use of public funds have the burden of proving how those shares have become their legitimate private property. The Sandiganbayan ruled that the provisions in PD No. 755, 961 and 1468 — mandating the free distribution of the UCPB shares and of the bank's investments in the CIIF Companies to the coconut farmers — are fatally defective for failing to show how the avowed public purpose of the same laws could be achieved by the free distribution of shares. It added that the laws failed to provide sufficient standards to guide the PCA in promulgating rules and regulations to effect the free distribution. The Sandiganbayan categorically stated:

> The investments made by UCPB in CIIF Companies are required by [P.D. 755, 961 and 1468] to be equally distributed **for free** by [UCPB] to the coconut farmers. The public purpose sought to be served by the free distribution of the shares of stock acquired with the use of public funds is not evident in [said P.D.s]. More specifically, it is not clear how private ownership of the shares of stock acquired with public funds could serve a public purpose. **The mode of distribution of the shares of stock also left much room for diversion of assets acquired through public funds into private uses or to serve directly private interests, contrary to the Constitution.** [emphasis ours]

The Sandiganbayan concluded that since the CIIF Companies were acquired with public funds, the 14 Holding Companies and all their assets, including the CIIF block of SMC shares, being public in character, belong to the government, in trust for the ultimate beneficiaries — the coconut farmers.

Cojuangco moved for reconsideration, but he was rebuffed by the Sandiganbayan in its December 28, 2004 resolution.[28]

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the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

[27] G.R. Nos. 147062-64, December 14, 2001, 372 SCRA 462. The Court held that coconut levy funds are not only affected with public interest but are *prima facie* public funds.

[28] Sandiganbayan Records, Volume 13, pp. 521-538.

The resolution lapsed to finality and was subsequently implemented.

2. For the Cojuangco block of SMC shares

The Republic likewise filed on July 11, 2003 a *Motion for Partial Summary Judgment [Re: Shares in San Miguel Corporation Registered in the Respective Names of Defendant Eduardo M. Cojuangco, Jr. and the Defendant Cojuangco Companies]*.[29]

In this motion, the petitioner claimed that Cojuangco acquired approximately 20% of the outstanding capital stock of SMC in 1983. Of these shares, 18% of the outstanding shares were registered in the names of the respondent corporations. All the shares were claimed to have been acquired with public funds from the coconut levy. At the time the shares were bought, Cojuangco was a director of UCPB and the PCA. Thus, he breached his fiduciary duty as a director when he diverted coconut levy funds, intended for the use of coconut farmers, to fund his own purchase of SMC shares.

The respondents filed an *Opposition*[30] to the motion for partial summary judgment raising, among other arguments, that their admission that loans from UCPB were used to pay for the SMC shares did not constitute an admission that the SMC shares were acquired with coconut levy funds since the ownership of the money loaned transfers to the borrower.[31]

On October 2, 2003, the Republic filed a *Reply* to the respondents' opposition. Among the documents it attached as Annexes "A" to "F" were original copies of **certification by the Corporate Secretary of the UCPB and CIIF Oil Mills**[32]

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[29] *Rollo* (G.R. No 180702) Volume II, pp. 642-684.

[30] Dated August 14, 2003, *id.* at 685-738.

[31] *Id.* at 722-724.

[32] Southern Luzon Coconut Oil Mills (SOLCOM), Cagayan de Oro Oil Co., Inc (CAGAOIL), Iligan Coconut Industries Inc. (ILICOCO), San Pablo Manufacturing Corporation (SPMC), Granexport Manufacturing Corporation (GRANEX) and Legaspi Oil Co., Inc. (LEGOIL), *id.* at 772.

Supreme Court E-Library

showing that Cojuangco had been among its officers and directors from 1983 to 1986, particularly:[33]

COMPANY	POSITION	PERIOD
Legaspi Oil Company	President	June 22, 1983 to May 29, 1985
San Pablo Manufacturing Corporation	President	June 22, 1983 to May 29, 1985
Granexport Manufacturing Corporation	President	June 22, 1983 to October 15, 1986
United Coconut Planters Bank	**President**	**1983 and 1984**

On October 21, 2003, the Sandiganbayan conducted a hearing on the motion for partial summary judgment. During the proceedings, the Republic clarified its claim that **the SMC shares were ill-gotten wealth because they were acquired through UCPB loans, CIIF Oil Mills or other coconut levy funded entities.**[34] **The respondents, on the other hand, admitted**

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[33] *Id.* at 808-819.

[34] *Rollo* (G.R. No. 169203), pp. 360-361. The transcript of the proceedings read:

JUSTICE VILLARUZ:

> The question of Mr. Mendoza is, are you disputing the fact that the shares were acquired from loans?

ASG DEL ROSARIO

> No. We are not disputing that, Your Honor.

JUSTICE VILLARUZ

> Makes the shares ill-gotten?

ASG DEL ROSARIO

> Yes, Your Honor. The shares are ill-gotten despite the fact that loans were used. So that is a conclusion which the Court may make from the undisputed facts.

JUSTICE VILLARUZ

> You mean to say that even if the loans were not sourced from UCPB, you would still say that the shares are ill-gotten?

Supreme Court E-Library

that the proceeds used in acquiring the SMC shares were *partly* derived from UCPB loans.[35]

On December 10, 2004, the Sandiganbayan issued a Resolution[36] **denying** the Republic's motion for summary judgment. It considered as **undisputed facts** the following:

(1) Cojuangco admitted that he acquired in 1983 approximately 20% of the outstanding SMC shares, which are registered in his name and in the name of 44 corporate respondents;

(2) Cojuangco used the proceeds of loans obtained from various sources in purchasing the said block of shares;

(3) the block of shares were purchased by Cojuangco from the Ayala Corporation and several other individuals and entities;

ASG DEL ROSARIO

No, Your Honor. It is ill gotten precisely because it was sourced from the UCPB.

JUSTICE VILLARUZ

You are begging the question. The Court is asking, if the shares were acquired from loans other than UCPB, would you say that the shares are ill gotten?

ASG DEL ROSARIO

No more, Your Honor, unless the source would be from a CIIF Oil Mills fund or other coco levy fund, Your Honor.

JUSTICE VILLARUZ

But it is your contention that the shares may have been acquired from proceeds of loan from UCPB and the shares ergo are ill gotten, is it not?

ASG DEL ROSARIO

Yes, Your Honor.

[35] *Id.* at 365. In the transcript of the notes taken during the hearing held on October 21, 2003 before the Sandiganbayan, the respondents' counsel Atty. Estelito Mendoza stated:

> We are fortunate and gratified that plaintiff makes it clear now that their cause of action is based solely based on their cause of action that these shares are ill-gotten wealth based solely on their assertion that the funds used to pay for the shares were borrowed from the United Coconut Planters Bank. **We are saying some of the funds but not all of the funds, full stop.** (Emphasis ours.)

[36] *Rollo* (G.R. No. 180702) Volume II, pp. 821-835.

Supreme Court E-Library

(4) the total of 27,198,545 shares of SMC stock at the time of the sequestration in 1989 has grown to 108,846,948 shares.[37]

On the other hand, the Sandiganbayan determined the following to be **disputed facts**:

(1) What are the various sources of funds, which the defendant Cojuangco and his companies claim they utilized to acquire the disputed SMC shares?

(2) Whether or not such funds acquired from alleged "various sources" can be considered coconut levy funds;

(3) Whether or not defendant Cojuangco had indeed served in the governing bodies of PCA, UCPB and/or CIIF Oil Mills at the time the funds used to purchase the SMC shares were obtained such that he owed a fiduciary duty to render an account to these entities as well as to the coconut farmers;

(4) Whether or not defendant Cojuangco took advantage of his position and/or close ties with then President Marcos to obtain favorable concessions or exemptions from the usual financial requirements from the lending banks and/or coco-levy funded companies, in order to raise the funds to acquire the disputed SMC shares; and if so, what are these favorable concessions or exemptions?[38]

E. The Hearing

During the hearing scheduled on August 8, 2006, the Republic manifested through its counsel that it would no longer present testimonial evidence and instead asked that the following documents be marked and taken judicial notice of by the court:

(1) Cojuangco's *Answer* to the Third Amended Complaint (Subdivided) dated June 23, 1999 in Civil Case No. 0033-F;

(2) Defendant CIIF Oil Mills and 14 CIIF Holding Companies' *Answer* dated January 5, 2000;

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[37] *Id.* at 831-832.

[38] *Id.* at 833.

Supreme Court E-Library

(3) Cojuangco's *Pre-Trial Brief* dated February 11, 2000, in the same case;

(4) Republic's *Motion for Summary Judgment [Re: Shares in San Miguel Corporation registered in the Respective Names of Defendant Eduardo M. Cojuangco, Jr. and the Defendant Cojuangco Companies]* dated July 11, 2003, also in the same case;

(5) PD No. 961, dated July 11, 1976, entitled "An Act to Codify the Laws Dealing with the Development of the Coconut and other Palm Oil Industry and for Other Purposes";

(6) PD No. 755, dated July 29, 1975, entitled "Approving the Credit Policy for the Coconut Industry as Recommended by the PCA and Providing Funds Therefore";

(7) PD No. 1468, dated June 11, 1978, entitled "The Revised Coconut Industry Code";

(8) Decision of the Supreme Court in *Republic v. Sandiganbayan*, G.R. No. 96073, January 23, 1995 (240 SCRA 376); and

(9) Decision of the Supreme Court in *Republic v. COCOFED*, G.R. Nos. 147062-64, December 14, 2001 (372 SCRA 462).

The Republic likewise filed a *Manifestation of Purposes*,[39] dated August 28, 2006, which the court considered as an offer of documentary evidence. The Sandiganbayan issued a Resolution on September 18, 2006[40] admitting all the exhibits that the Republic offered.

On November 24, 2006, the Republic rested its case. The respondents' counsel, for their part, manifested that they would no longer present controverting evidence, since the Republic

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[39] Sandiganbayan Records, Volume 17, pp. 104-126.

[40] Sandiganbayan Records, Volume 17, pp. 130-A – 130-B.

Supreme Court E-Library

had not proven its allegations; instead, the respondents offered documentary evidence to support their counterclaims.[41]

In an Order dated December 5, 2006,[42] the graft court admitted all the exhibits that the respondents offered. The trial ended on the same date and the parties were ordered to file their respective memoranda. Thereafter, the case was considered submitted for resolution.

F. The Sandiganbayan Decision

On November 28, 2007, the Sandiganbayan issued its Decision[43] denying the Republic's claims, as well as the respondents' counterclaims. It ruled that the Republic had not been able to prove that the respondents acquired the SMC shares using public funds or that Cojuangco abused his position to acquire these shares. It pointed out the lack of paper trail or testimonies that would establish the illegal scheme that the respondents allegedly engaged in. It noted that even during pre-trial, the Republic had not been able to identify the documents that it would present.

The present petitions present to this Court the **core issue** for resolution: **whether the government's claim over the subject shares is meritorious, based on the evidence on record.**

II. REFLECTIONS

A. Preliminary Considerations

A.1. The Republic's Claim for Recovery: A Return to the Wider View

The Republic's quest, as expressed in its complaint against Cojuangco and the other respondents for the recovery of SMC shares, ***focused on Cojuangco*** from the very beginning; its objective was the recovery of what it considered to be Cojuangco's ***ill-gotten wealth lodged in the SMC shares***. Thus, the **first**

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[41] *Id.* at 199-211.

[42] *Id.* at 249.

[43] *Rollo* (G.R. No. 180702), Volume 1, pp. 78-131.

Supreme Court E-Library

cause of action was for the recovery of properties that were alleged to be manifestly disproportionate to Cojuangco's income. The **second** was to recover the properties that Cojuangco allegedly acquired in breach of the public trust through abuse of the power he enjoyed because of his close association with former President Marcos.

Somewhere in the course of prosecuting the case, the Republic dropped its pursuit of the first cause of action. Thus, this claim proved to be a road not taken for the government. The **second cause of action**, on the other hand and for purposes perhaps of an orderly and logical handling, was divided into two aspects with different set of objectives. The **first aspect** identified and concentrated on the CIIF block of SMC shares registered in the names of 14 holding companies (which in turn were formed by the six CIIF Oil Mills where UCPB had made coconut levy fund investments). The **second**, identified as the Cojuangco block of SMC shares, concentrated on Cojuangco and the companies he established to purchase the SMC shares. The loans from the UCPB and the advances from the CIIF Oil Mills were alleged to be the conduits through which coconut levy funds were channeled and used to pay for the purchased SMC shares.

After pre-trial, the Republic separately moved for partial summary judgments for the CIIF block and for the Cojuangco block, believing — rightly or wrongly — that enough undisputed facts existed to justify a judgment on the merits. The motion covering the CIIF block met favorable response from the Sandiganbayan, whose award of the shares to the Republic did not merit any contrary response from Cojuangco; faced with the Sandiganbayan judgment, the opposition that Cojuangco and the other respondents initially showed simply melted. Thus, this aspect of the case faded into the background, together with the first cause of action for unjust enrichment. The Cojuangco block aspect, on the other hand, continued to be litigated under the theory that Cojuangco amassed these shares through abuse of power made possible by his close association with the martial law regime.

Supreme Court E-Library

In another turn of events, the counsels for the Republic chose not to go to trial **despite** an earlier rejection of its motion for summary judgment and the unmistakable signals from the Sandiganbayan that it considered the case unripe for submission for decision. Instead, the Republic served a *Manifestation of Purpose* that the Sandiganbayan chose to regard as its formal offer of documentary evidence. Faced with this move, Cojuangco likewise chose not to submit evidence on the theory that the Republic's **submission**, composed mainly of ***pleadings filed, decided cases*** and ***laws***, did not at all prove the allegations of the remaining aspect of the complaint.

A reminder of the wider view of the case as originally filed is offered as an opening in these Reflections in order to ensure that the original big picture is not forgotten. The original picture the Republic painted through the complaint is about ***a series of interconnected moves — both at the CIIF end and from the end of Cojuangco, the UCPB, and the allied Cojuangco companies — where Cojuangco was at the center*** to use the coconut levy funds, or the companies funded or supported by coconut levy funds, for the purchase of SMC shares. While the Republic itself, wittingly or unwittingly, has partitioned this big picture into a forgotten first cause of action and a second cause of action that was divided into two aspects, ***this big picture and the grand and coordinated moves that it drew at the beginning should remain in mind as a background in viewing the remaining aspect under litigation.*** This background may be useful in sifting through the facts established by the Partial Summary Judgment on the CIIF block of SMC shares for use in considering the present Cojuangco block aspect; **facts established between the same parties in one aspect of the same case should be conclusive in the remaining aspect of the case.** Advances from the CIIF Oil Mills were, after all, admitted by Cojuangco, as discussed below; the interconnectedness of the two aspects of the second cause of action are plain and evident and only remains to be linked by evidence. These established facts may also somehow contribute to a deeper understanding of the turn of events in the Republic's handling of and the developments in the case, leading to an

Supreme Court E-Library

unappealed partial summary judgment and the virtual refusal of the Republic's counsels to proceed to trial. Certainly, these established facts as well as the attendant circumstances and developments in the remaining Cojuangco block aspect of the case can be very useful in appreciating and judging the actions of the lawyers of the Republic in terms of the competence, degree of care and even the integrity they exhibited in handling the case.

A.2. What is at stake – value of Cojuangco block of SMC shares

The Republic's Third Amended Complaint, filed in 1995, claimed ownership over the 16,276,545 of SMC shares that were allegedly acquired by Cojuangco in 1983 with the use of coconut levy funds. At the time of acquisition, this Cojuangco block of SMC shares constituted 20% of the total shareholdings of SMC and was purchased for US$49 million.[44] Because of the issuance of new shares, the Cojuangco block's shareholding was reduced to 17% in 2007[45] and 15% in 2010.[46] **As of December 2010, the remaining 15% shareholding translates to 493,375,183 common shares, and is worth about ₱84.56 billion**[47] **or US$1.86 billion.**[48] At the current exchange

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[44] Equivalent to ₱539 million, based on the June 23, 1983 currency exchange rate of ₱11.00 per US$ 1.00, International Economics: Historical Exchange Rate Regime of Asian Countries, at http://intl.econ.cuhk.hk/exchangerate_regime/index.php?cid=1, last visited April 7, 2011.

[45] Artemio Panganiban, *Danding wins San Miguel but losses Cocobank*, With Due Respect, Philippine Daily Inquirer, December 12, 2007, at http://opinion.inquirer.net/inquireropinion/columns/view/20071209-105737/Danding_wins_San_Miguel_but_losses_Cocobank, last visited April 6, 2011.

[46] Rey Eñano, *San Miguel's Cojuangco waiting for the right price*, Manila Standard Today, December 2, 2010, at http://www. manila standard today.com/insideBusop.htm?f=2010/december/2/reyenano.isx&d=2010/december/2, last visited April 6, 2011.

[47] Based on SMC Class A common share closing price of ₱171.4 on April 7, 2011, Philippine Star.

[48] Based on the April 7, 2011 currency exchange rate of ₱ 45.43 per USD 1.00.

Supreme Court E-Library

rate,[49] the original acquisition cost of the shares is now equivalent to ₱2.23 billion, which means that over the past 27 years, the shares have ballooned 38 times its original value.

For added perspective, the shares' acquisition cost of US$49 million was equivalent to **0.94% of the national budget for 1982**:[50] it was also equivalent to 12.29% of the budget allocated for education,[51] 307.83% of the budget for social service and development,[52] and 25.07% of the budget for health.[53] The present worth of the shares (₱84.56 billion) is equivalent to **5.49% of the entire national budget for 2010**.[54] This is also equivalent to about half the 2010 appropriation for education or 48.94%, 5.83% of the budget for social welfare and development, and 2.97% of the budget for health.

The SMC is one of the biggest conglomerates in the country. It is the leading food, beverage and packaging company, now with diversified interests and substantial investments in non-related industries like power and other utilities, banking, mining, energy, tollways, infrastructure, and airports. According to SMC's Annual Report for 2009, its total assets amount to ₱438.5 billion, and its income was ₱57.8 billion — double the amount appropriated in 2010 for health and social welfare, and one-third of that for education. SMC generates nearly 4% of the gross national product and pays 6% of the total taxes collected.[55]

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[49] *Ibid.*

[50] The national budget for fiscal year 1982 was ₱57,091,994,000.00; data for 1983 were unavailable.

[51] Total amount appropriated for the Ministry of Education, Culture and Sports for Fiscal Year 1982 was ₱ 4,387,012,000.00.

[52] Total amount appropriated for the Ministry of Social Service and Development for Fiscal Year 1982 was ₱ 175,099,000.00.

[53] Total amount appropriated for the Ministry of Health for Fiscal Year 1982 was ₱ 2,149,789,000.00.

[54] The national budget for fiscal year 2010 is ₱ 1,540,000,000.00.

[55] Jonathan Sprague and Raissa Espinosa-Robles, *Battle for San Mig*, at http://www-cgi.cnn.com/ASIANOW/asiaweek/97/1212/biz1.html, last visited April 7, 2011.

Certainly, the State's recovery of the SMC shares, if substantiated, would translate into a significant increase in the government's assets and would be a steady source of income. *But the State's interest in SMC goes beyond these numerical figures.* The SMC is a company that has been in existence for over 120 years. It is one company that has integrated itself in the lives of the Filipino people. Starting in 1890 with beer as its sole product, now its "product portfolio includes over 400 products"[56] — many of which the Filipino people have grown up with and have become parts of their lives. No Filipino would dispute SMC's claim that it "has generated strong consumer loyalty through brands that are among the most formidable in the Philippine food and beverage industry." Its flagship product — the San Miguel Beer — is in fact known worldwide. Indeed, SMC's internationalization efforts, by extending operations to Asia and Australia, have also become a source of national pride.

From these perspectives, the Republic undoubtedly has a strong *economic* interest to protect, for itself and for the Filipino people, particularly for the coconut farmers. Beyond these interests, *the integrity of government processes and the people's political will* to take the high moral road are likewise being tested in this long drawn-out case. This is not to say that a reversion as demanded by government should take place. Beyond reversion or non-reversion is the necessity of *putting a dignified closure* to nagging questions that the nation has carried since the end of the Marcos years.

With these reminders made, I go back to the consolidated petitions before us.

B. Cojuangco's Admissions on Sources of Funds for the SMC shares Purchase

The Republic's claim over the Cojuangco block of shares is based on the premise that public funds were used for the purchase of these shares. While an admission exists on the record on the

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[56] http://www.sanmiguel.com.ph/Content.aspx?MID=0&coid= 1&navID=12, last visited April 7, 2011.

Supreme Court E-Library

part of both parties that Cojuangco acquired the shares using UCPB loans and CIIF advances, no unanimity exists on whether these loans are in the nature of public funds. Justice Carpio Morales' *ponencia* and Justice Bersamin's dissent offer contrary views on whether, to begin with, an admission has been made that the UCPB loans and the CIIF Oil Mills advances were used for the purchase of the shares.

I agree with Justice Carpio Morales that Cojuangco did indeed admit in his pre-trial brief that the funds used in the purchase of SMC shares were sourced from UCPB loans and CIIF Oil Mills advances.

B.1. Cojuangco's Admission in his Pre-Trial Brief

Cojuangco's *Pre-Trial Brief* made a categorical statement of the evidence he would present at the trial. This statement is quoted verbatim at page 5 hereof.

He categorically said that he would introduce "Records of the United Coconut Planters Bank which would show borrowings of the companies listed in **Annexes "A" [referring to the 14 CIIF holding companies] and "B" [referring to the 43 or 44 respondent companies]** x x x used to source payment of the shares of stock of the San Miguel Corporation."

He likewise represented that he would call as witnesses a "**representative of the United Coconut Planters Bank** who will testify in regard the **loans which were used to source the payment of the purchase price** of the SMC shares of stock" and a "**representative of the CIIF Oil Mills** who will testify in regard the loans or **credit advances which were used to source the payment of the purchase price** of the SMC shares of stock."[57]

Justice Bersamin dismisses these statements as ***mere proposals*** of Cojuangco which do not constitute an admission that the funds in the purchase of the SMC shares came from the UCPB loans and the CIIF Oil Mills advances. "[T]he statement were

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[57] *Rollo* (G.R. No. 180702), Volume I, pp. 137-138.

merely being proposed, that is, they were not yet offered or were not yet intended as admissions of any fact stated therein."[58]

With due respect, Justice Bersamin's contention fails to consider a party's intent and representation in stipulating on the evidence he proposes to present during trial; by his stipulation, the party thereby ***claims — and thus admits*** — that the evidence he pointed to would substantiate the material averments in his pleadings.

In his *Answer*, Cojuangco alleged that:

> 5.02.b. Herein defendant admits paragraph 14(b) of the complaint[59] insofar as it is alleged therein that in 1983, he acquired shares of stock representing approximately 20% of the outstanding capital stock of San Miguel Corporation x x x. Herein defendant further denies the allegation, implication or insinuation, whether contained in paragraph 14(b) or in any other portion of the complaint that he acquired the aforesaid interest in San Miguel Corporation with the use of coconut levy funds, or in any manner contrary to law, the truth being that herein **defendant acquired said shares of stock using the proceeds of loans obtained by herein defendant from various sources.**

Cojuangco did not need to enumerate in this *Answer* his alleged various sources of loans, as these are evidentiary matters that need not be actually introduced until the trial. At the time he filed his *Answer*, it was sufficient for him to aver, as his defense, that the coconut levy funds were not used to fund the purchase of the SMC shares; rather, he obtained the funds from "various sources." What these various sources are, are matters of evidence that he would introduce.

In his *Pre-Trial Brief*, however, what he *generally* claimed in his Answer became *concrete* when he represented that these

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[58] *J.* Bersamin's *Revised Reflections*, p. 59.

[59] Par. 14 (b) of the Republic's Complaint alleged:

> (b) He [Cojuangco] entered SMC in early 1983 when he bought most of the 20 million shares of Enrique Zobel owned in the company. The shares, worth $49 million, represented 20% of SMC;

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pieces of evidence consist of UCPB documents and testimonies of witnesses from UCPB and CIIF Oil Mills. As no evidence can be considered during trial unless they have been identified during pre-trial, this identified evidence substantiating the material allegation in his *Answer* is effectively an admission of what the various sources of funding were. In other words, the respondents identified the various sources of funds alleged in his *Answer* when he offered in his *Pre-Trial Brief* to support this allegation through documents from UCPB and the testimonies of witnesses from UCPB and CIIF Oil Mills on loan and credit advances. The statement in Cojuangco's *Pre-Trial Brief* is thus not a mere proposal but a direct admission of what would support his material allegation. Indeed, it is ridiculous for a party to stipulate on documents and witnesses he would present as evidence if these were not intended to support his position. To be sure, a defendant may choose not to present evidence should the plaintiff fail to support its claims, but his desistance is not due to any change of position but due to the lack of need to support his position; a defendant cannot radically change his theory of the case and deny his earlier statements depending on what the plaintiffs present as evidence.

B.2. Admission on October 21, 2003 by Cojuangco's Counsel

During the October 21, 2003 hearing, the Sandiganbayan sought to clarify whether Cojuangco admitted that the SMC shares were acquired using UCPB loans. Atty. Estelito Mendoza, counsel for Cojuangco, initially declared that the statement in their *Pre-Trial Brief* did not amount to an admission. When probed by the court, Atty. Mendoza sought clarification from the counsel for the Republic if it theorizes that the SMC shares are "ill-gotten wealth because they were paid with use of loans." Counsel for the Republic declared that precisely because the loans came from UCPB/CIIF Oil Mills that made them ill gotten. Atty. Mendoza then proceeded to state that

Supreme Court E-Library

ATTY. MENDOZA:

Records which would show borrowings of the companies listed in Annexes A and B or companies affiliated which were used to source funds. Well, we do not say how much, we do not say when, we do not say whether this has been all paid back. x x x We are fortunate and gratified that plaintiff makes it clear now that their cause of action is solely based on their cause of action [sic] that these shares are ill-gotten wealth based solely on their assertion now that the funds used to pay for the shares were borrowed from the United Coconut Planters Bank. So that is the position of the plaintiff. **We are saying some of the funds but not all of the funds, full stop.**[60]

At the very least, Atty. Mendoza's statement was an admission that UCPB loans and CIIF Oil Mills advances were used as funding to purchase a portion of the subject SMC shares. As to how much was the loan, when it was taken, and if it was already paid, however, remained to be proven.

B.3. Implied Admission through Failure to Deny

Cojuangco also failed to specifically deny the allegation in paragraph 14(l) of the Republic's *Complaint* that UCPB and CIIF Oil Mills loans were used to purchase SMC stocks. Under the Rules of Court,[61] what is not denied is deemed admitted.

The *Complaint* reads:

14. x x x (l) These companies, which ACCRA Law Offices organized for Defendant Cojuangco to be able to control more than 60% of SMC shares [referring to those enumerated in paragraph (k), which corresponds to the 44 Cojuangco-affiliated companies], were funded by institutions which depended upon the coconut levy such as the UCPB, UNICOM, United Coconut Planters Life Assurance Corp. (COCOLIFE), among others, Cojuangco and his ACCRA lawyers used the funds from 6 large coconut oil mills and 10 copra trading companies **to borrow money from the UCPB and purchase** these holding companies **and the SMC stocks.** Cojuangco used $150 million from the coconut levy, broken down as follows:

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[60] *Rollo* (G.R. No. 169203), p. 365.

[61] RULES OF COURT, Rule 8, Section 11.

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Amount (in millions)	Source	Purpose
$22.26	Oil mills	Equity in holding companies
$65.6	Oil mills	Loan to holding companies
$61.2	UCPB	Loan to holding companies

The entire amount, therefore, came from the coconut levy, some passing through the Unicom oil mills, others directly from the UCPB.

Cojuangco answered the above allegations by stating that:

5.02.1. Herein defendant denies paragraph 14(l) of the complaint, the truth being that the companies incorporated in his behalf by the ACCRA Law Office cumulatively own less than 20% of the outstanding capital stock of SMC, that herein **defendant did not use the coconut levy funds, or any part thereof, to acquire his shareholdings in SMC.**

This bare statement that he did not use coconut levy funds to acquire his shareholding in SMC is a mere general allegation that does not negate the Republic's material averment that UCPB loans, among others, funded the purchase of the SMC shares. Section 10, Rule 8 of the Rules of Court requires a defendant to "specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial." Otherwise, material averments in the complaint are deemed admitted.[62] It was only in his *Pre-Trial Brief* that Cojuangco qualified his general averment that the SMC shares were not bought with coconut levy funds.

Cojuangco questioned the characterization of the UCPB loans by contending that these became private in nature based on Civil Code provisions on Loan only after the Republic filed its motion for summary judgment. But even this contention (that the UCPB loans are private in character) implies that Cojuangco availed of UCPB loans.

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[62] RULES OF COURT, Rule 8, Section 11.

C. What loans and advances did Cojuangco secure?

While I may agree with the *ponencia* that Cojuangco indeed admitted that he secured loans from UCPB and advances from the CIIF Oil Mills, I disagree with its conclusion that the totality of the SMC shares Cojuangco purchased should totally revert to the Republic in the absence of more specifics on the extent of the loan and advances made and the purchase effected. Between admissions that purchases were made and that loans and advances were secured to finance these purchases, are big factual and evidentiary gaps on the extent, manner, and other details of the loans, the advances and the purchases made. These are critical parts of the transactions claimed to be the basis for reconveyance and are parts of the cause of action the Republic, as plaintiff, has to prove. *These are component parts of the cause of action that the plaintiff has the burden of proving before the burden of evidence shifts to the defendant.* As will be discussed below, the manner the loans and advances were secured are critical elements to identify the SMC shares as ill-gotten wealth that the Republic can recover. **All these do not appear to have been proven through the evidence the Republic offered to support its case.**

D. The public nature of the sources of funds used to purchase the SMC shares

Cojuangco's admission that he availed of UCPB loans and CIIF Oil Mills advances does not also automatically characterize these proceeds as ill-gotten wealth. In his Revised Reflections, Justice Bersamin enumerates the elements that would establish that assets and properties are ill-gotten wealth under Executive Order (*EO*) No. 1 and 2: (1) they must have **originated from the government itself;** and (2) they must have been **taken by former President Marcos, his immediate family, relatives, and close associates *by illegal means***.[63] Justice Bersamin identified these elements by considering the concept of "ill-gotten wealth" as defined by law[64] and by

[63] *J.* Bersamin's *Revised Reflections*, p. 45.

[64] Citing EO Nos. 1 and 2 (1986).

Supreme Court E-Library

jurisprudence.[65] Given these elements, Cojuangco's admission as to the source of the funds used to purchase the SMC shares, by itself, would not make a case for forfeiture of ill-gotten wealth for the Republic based on its second cause of action (under EO No. 1 and 2). Apart from the personality of the defendant and the manner of taking, the sources of the funds — the UCPB and CIIF Oil Mills loans and credit advances — must be established as coming from the "vast resources of the government" that were taken by "illegal means."

D.1. The nature of the CIIF Oil Mills credit advances

The determination of whether CIIF Oil Mills advances are public funds does not present a major hurdle. A simple tracing of the organization and funding of the CIIF Oil Mills to the coconut levy fund establishes the link that marks the fund as public.

The coconut levy fund is a collective term referring to various funds that came from "levies on sale of copra or equivalent coconut products exacted for the most part from coconut farmers." Specifically, the coconut levy fund refers to:

> (1) the Coconut Investment Fund (*CIF*) created under R.A. No. 6260; the Coconut Consumers Stabilization Fund (*CCSF*) created under PD 276;
>
> (2) the Coconut Industry Development Fund (*CIDF*) created under PD 582; and
>
> (3) the Coconut Industry Stabilization Fund (*CISF*) created under PD 1841.[66]

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[65] Citing *Bataan Shipyard & Engineering Co., Inc v. Presidential Commission on Good Government* (G.R. No. 75885, May 27, 1987, 150 SCRA 181, 209), *Presidential Commission on Good Government v. Lucio Tan* (G.R. Nos. 173553-56, December 7, 2007, 539 SCRA 464, 481), and *Chavez v. Presidential Commission on Good Government* (G.R. No. 130716, December 9, 1998, 299 SCRA 744, 768-769).

[66] *Leyson, Jr. v. Office of the Ombudsman*, G.R. No. 134990, April 27, 2000, 331 SCRA 227, 233-234.

Supreme Court E-Library

The CCSF was created in 1973 and was set up to "subsidize the sale of coconut-based products at prices set by the Price Control Council."[67] On the other hand, the CIDF was created in 1974 to "finance the establishment, operation, and maintenance of a hybrid coconut seednut farm x x x (which shall be used for the) nationwide coconut replanting program."[68] Pursuant to PD No. 1468 (which revised PD No. 961 or the Coconut Industry Code), portions of the CCSF and the CIDF that were not required for the replanting program and other authorized projects shall be used to "make investments in the form of shares of stock in corporations organized for the purpose of engaging in the establishment and operation of industries and commercial activities and other allied business undertakings relating to the coconut and other palm oil industries."[69] The surplus of the CCSF and the CIDF came to be known as the Coconut Industry Investment Fund or CIIF, and the corporations in which the CIIF was invested were known as CIIF companies. In the 1993 *Republic v. Sandiganbayan*[70] declared that —

"x x x coconut levy funds being clearly affected with public interest, it follows that the corporations formed and organized from those funds, and all assets acquired therefrom, should also be regarded as clearly affected with public interest."

Since the CIIF Oil Mills and the holding companies were organized/acquired and funded using the coconut levy funds, it follows that the oil mills and all their assets, including their investments, are public funds. This is the basic reason underlying the partial judgment on the CIIF block of SMC shares; the funds used in the purchase of these shares are public so that the shares purchased rightfully belong to the Republic.

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[67] PD No. 276, Section 1 (b).

[68] PD No. 532, Section 3-B (a) and (b).

[69] PD No. 1461, Article III, Section 9; the investments shall be made by a commercial bank acquired by PCA pursuant to PD 755, referring to UCPB.

[70] G.R. No. 96073, February 16, 1993.

Supreme Court E-Library

D.2. The nature of the UCPB loans

The same reasoning applies *mutatis mutandis* with respect to the UCPB which exercised a dual role in the use of coconut levy funds.

D.2.a. UCPB as administrator of coconut levy funds

In answer to the coconut farmers' perennial credit problems, the government deemed the acquisition of a commercial bank to be imperative. On May 17, 1975, the PCA — one of the government agencies involved in the collection, management, investment, and use of the coconut levy fund[71] — bought the shares of First United Bank (*FUB*) belonging to Pedro Cojuangco. The sale of the bank's shares to PCA was made indirectly, through respondent Eduardo Cojuangco, since he had the exclusive option to acquire Pedro Cojuangco's controlling interest in FUB.[72] The funds used to purchase the FUB shares were from the CCSF.[73] Accordingly, certificates of stock representing 129,960 shares of FUB were issued on May 30, 1975[74] "in the name of [PCA] for the benefit of the coconut farmers of the Philippines." FUB subsequently changed its name to UCPB and amended its Articles of Incorporation in July 1975 to reflect the corporate changes.[75]

With the government's acquisition of UCPB through the PCA using coconut levy funds, all collections from the imposition of the coconut levies were required to be deposited, interest free,

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[71] *Philippine Coconut Producers Federation, Inc. (COCOFED), et al. v. Presidential Commission on Good Government, et al.*, G.R. No. 75713, October 2, 1989, 178 SCRA 236, 244.

[72] Agreement, SB Records, Vol. 10, pp. 698- 702; see also *Republic v. Sandiganbayan*, G.R. No. 118661, January 22, 2007, 512 SCRA 25, 30.

[73] *Republic v. Cocofed, et al.*, G.R. Nos. 147062-64, December 14, 2001.

[74] *Republic v. Sandiganbayan*, G.R. No. 118661, January 22, 2007, 512 SCRA 25, 31.

[75] *Ibid.*

Supreme Court E-Library

with UCPB.[76] The deposited coconut levy fund was primarily allotted to serve the credit requirements of the coconut farmers by providing them, upon proper authorization, with credit facilities at preferential rates.[77] Through decrees subsequently promulgated by President Marcos, UCPB was also given "full power and authority" to invest the surplus of the coconut levy fund, in acquiring *shares of corporations engaged in the coconut and palm oil industries*.[78] In this manner, UCPB became not only the depositary, but also the administrator, of the coconut levy fund. Thus, investments made by UCPB, directly or indirectly, as administrator of the coconut levy fund became impressed with public character; they were public investments even if made in the form of a loan to a private entity since they were sourced from a public fund and made pursuant to a declared national policy. In *Republic v. COCOFED*,[79] we ruled that if the money is allocated for a special purpose and raised by a special means, it is public in character. Government funds deposited in a bank remain as government funds; "even assuming that these become commingled with other funds of the bank, this does not remove the character of the fund as a credit representing government funds thus deposited."[80]

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[76] See PD No. 961, Article III, Section 8, and PD No. 1468, Article III, Section 8.

[77] PD No. 755, Sections 1 and 2.

[78] See PD No. 961, Article III, Section 9; and PD 1468, Article III, Section 9. See also Letters of Instructions No. 926 (September 3, 1979), which declared:

> Section 2. *Organization of the Cooperative Endeavor.* The (UCPB), in its capacity as the investment arm of the coconut farmers, thru the [CHF] x x x is hereby directed to invest, on behalf of the coconut farmers, such portion of the CHF x x x in a private corporation which shall serve as the instrument to pool and coordinate the resources of the coconut farmers and the oil millers in the buying, milling and marketing of copra x x x .

[79] G.R. No. 147062-64, December 14, 2001.

[80] *Philippine Rock Industries, Inc., v. Board of Liquidators*, G.R. No. 84992, December 15, 1989.

Supreme Court E-Library

D.2.b. UCPB as a commercial bank

While functioning as depositary and administrator of the coconut levy fund, UCPB also continued to function as a commercial bank one of whose activities is the extension of loans to clients. Based on its genesis and the purposes it serves, UCPB is not simply a commercial bank; it is a bank owned and controlled by the government because of the ownership of its shares, the control that government exercises, and the purposes that it serves;[81] it is specifically a government arm in the banking industry to serve the specific needs of coconut farmers through the administration of the deposited coco levy funds and by serving as a specialized coconut farmers' bank.[82] As a government-owned or controlled corporation, UCPB's assets are government assets and its funds are subject to audit by the Commission on Audit.[83] Thus, the funds that it lends out are public funds; any

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[81] *Leyson, Jr. v. Office of the Ombudsman,* G.R. No. 134990, April 27, 2000, 331 SCRA 227 laid down the requisites necessary to consider an agency or entity a GOCC: a) the agency must be organized as a stock or non-stock corporation; b) it is vested with functions relating to public needs, whether governmental or proprietary in nature; and c) it is owned by the government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock.

[82] Section 1 of PD No. 755.

[83] Section 2 (1), Article IX of the 1987 Constitution reads:

> Section 2 (1). The Commission on Audit has the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the government, or any of its subdivisions, agencies or instrumentalities, including government-owned and controlled corporations with original charters, and on a **post-audit basis: xxx(c) other government-owned and controlled corporations** xxx. **However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies**. (Emphasis ours.)

See also *Yap v. Commission on Audit*, G.R. No. 158562, April 23, 2010.

Supreme Court E-Library

private ownership in its corporate structure is confined to the minority privately-held shares, which do not detract from the character of the bank as a government-owned and controlled corporation.

E. Were the Loans and Advances Illegally Obtained?

The corporate relationship of Cojuangco with UCPB and with the CIIF Oil Mills, plus the loan or advance of funds that are public in character, do not by themselves characterize the property acquired using the borrowed funds as ill-gotten wealth that should be reconveyed to the Republic. Both the relationship between Cojuangco, on the one hand, and the bank and the oil mills, on the other, as well as their transactions with one another, viewed separately, are legally neutral. It is another matter, however, if they interact because of laws regulating such interactions. There, too, is the question of whether active irregularities attended these transactions, although no other illegality is claimed in this case.

A first question to ask is whether Cojuangco as a director and officer of UCPB or as director of the CIIF Oil Mills can obtain a loan from his principals to purchase the SMC shares.

E.1. A loan or advance to Cojuangco is not per se ultra vires.

Section 45 of the Corporation Code states:

> Section 45. *Ultra vires acts of corporations*.—No corporation under this Code shall possess or exercise any corporate powers except those conferred by this Code or by its articles of incorporation and except such as are necessary or incidental to the exercise of the powers so conferred.

It should be noted that what is *ultra vires* or beyond the power of the corporation must also be *ultra vires* or beyond the power of its board of directors to undertake. The powers of the board of directors, who under the law are authorized to exercise the powers of the corporation, are necessarily limited by restrictions imposed by law on the corporation, as these

Supreme Court E-Library

restrictions are necessarily imposed also on the board of directors who act in behalf of the corporation.[84]

As earlier stated, the purpose of UCPB was to provide readily available credit for coconut farmers. PD No. 755 confirms this purpose when it states:

> WHEREAS, in compliance with its prescribed duty, the Philippine Coconut Authority has ascertained, in response to the appeal of coconut farmers conveyed in a resolution of the Board of Directors of the Philippine Coconut Producers Federation dated May 17, 1975 that ownership by the coconut farmers of a commercial bank is a permanent solution to their perennial credit problems.
>
> x x x x x x x x x
>
> 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 of 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.
>
> Section 2. *Financial Assistance*. To enable the coconut farmers to comply with their contractual obligations under the aforesaid Agreement, the Philippine Coconut Authority is hereby directed to draw and utilize the collections under the Coconut Consumers' Stabilization Fund authorized to be levied by Presidential Decree No. 232, as amended, to pay for the financial commitments of the coconut farmers under the said agreement and, except for the budgetary requirements of the Philippine Coconut Authority as approved by the Governing Board, all collections under the Coconut Consumers' Stabilization Fund Levy and fifty percent (50%) of the collections under the Coconut Industry Development Fund shall be deposited, interest free, with the said bank of the coconut farmers and such

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[84] Cesar Villanueva, *Philippine Corporate Law*, 1998, pp. 263-264, citing Guevarra, *The Social Function of Private Corporations*, 34 Phil. L.J. 464, 465 (1959).

deposits shall not be withdrawn until the Board of Directors of the said Bank and the Governing Board of the Philippine Coconut Authority shall have jointly **ascertained that the bank has sufficient equity capital to be in a financial position to service in full the credit requirements of the coconut farmers**; xxx

Under these terms, if the Republic had been able to prove that the amount of the loans to Cojuangco were so substantial that they covered the funds reserved for the use of coconut farmers, then a case can be made that the grant of the loan was an *ultra vires* act. What the Republic claimed in its Memorandum of January 19, 2007 — that it should have been UCPB and CIIF Oil Mills and not the respondents who should have purchased the subject shares[85]— would also apply. However, if the amount that Cojuangco borrowed consisted of funds that the UCPB could use for other investments, then no sufficient basis exists under the *ultra vires* rule to claim that the loans granted to Cojuangco for the purchase of SMC shares had been contrary to UCPB's purpose under PD No. 755. Under this situation, UCPB's grant of the loan for the purchase of SMC shares, by itself, would not constitute an *ultra vires* act, unless the Republic specifies some other irregularity whose consequence is to make the act *ultra vires*.

E.2 Breach of Fiduciary Duties

The grant of loans to Cojuangco, who was a director and officer of UCPB at the time that the shares were purchased, raises propriety questions under Sections 31 and 34 of the Corporation Code which provide:

Sec. 31 *Liability of directors, trustees or officers*.—Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or **acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.**

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[85] *Rollo* (G.R. No. 180702), Volume V, p. 1765.

Supreme Court E-Library

When **a director, trustee, or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation** in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and **must account for the profits** which otherwise would have accrued to the corporation.

x x x x x x x x x

Section 34. *Disloyalty of a director*.—Where a director, by virtue of his office, **acquires for himself a business opportunity which should belong to the corporation, thereby obtaining profits to the prejudice of such corporation, he must account to the latter for all such profits by refunding the same**, unless his act has been ratified by a vote of the stockholders owning or representing at least two-thirds (2/3) of the outstanding capital stock. This provision shall be applicable, notwithstanding the fact that the director risked his own funds in the venture. (Emphasis ours.)

As early as 1929, the Court recognized the rule that directors of a corporation are bound to care for its property and manage its affairs in good faith. If a violation of these duties results in the waste of corporate assets or injury to corporate property, the directors, like other trustees, are liable for the waste or injury. If they perform acts clearly beyond their power, whereby loss ensues to the corporation, or dispose of its property or pay away its money without authority, they will be required to pay for the loss out of their private assets.[86]

Notably, in *Palting v. San Jose Petroleum*,[87] the Court invalidated provisions in the company's by-laws that allowed directors and officers of the corporation to do anything with the affairs of the corporation, even to benefit themselves directly or other persons or entities in which they are interested; such provisions were considered as contrary to the traditional fiduciary relationship between the directors and the stockholders of the company.

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[86] *Steinberg v. Velasco*, 52 Phil. 953, 960 (1929).

[87] G.R. No. L-14441, December 17, 1966, 18 SCRA 924, 943.

Supreme Court E-Library

The directors of a corporation hold positions of trust and as such, they owe a duty of loyalty to their corporation. In case their interests conflict with those of the corporation, they cannot sacrifice the latter for their own advantage and benefit. This trust relationship is not a matter of statutory or technical law; it springs from the fact that directors have the control and guidance of corporate affairs and property and, hence, of the property and interests of the stockholders.[88]

In *Bailey v. Jacobs*,[89] the Supreme Court of Pennsylvania held that directors and officers must act in utmost good faith and cannot deal with the funds and property of the corporation, nor utilize the influence and advantage of their offices, for any but the common interest. If they make a personal profit through the use of corporate assets, they must account for it to the stockholders. It is immaterial that their dealings may not have caused a loss or been harmful to the corporation; the test of liability is whether they have been unjustly enriched.

On the surface, the present case is similar to *Bailey* where a director had used so-called advances from the corporation to purchase stocks of another company. Cojuangco appears to have betrayed the interests of UCPB when he purchased for himself the SMC shares using UCPB funds, when the same funds could have been used by UCPB to purchase the said shares for itself as administrator of the coconut levy funds. Thus, the benefits of the sale of the SMC shares should accrue to the UCPB. This conclusion, however, can be a rash judgment because the present case lacks the evidentiary support that *Bailey* enjoyed; the supporting evidence is not at all certain — a consequence of the Republic's failure to proceed to full-blown trial.

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[88] *Prime White Cement Corp. v. Intermediate Appellate Court*, G.R. No. 68555, March 19, 1993, 220 SCRA 103, 110. See also *Gokongwei, Jr. v. Securities and Exchange Commission*, G.R. No. L-45911, April 11, 1979, 89 SCRA 336, 367-368.

[89] 189 A. 320 (1937).

Supreme Court E-Library

In the first place, the Republic failed to present categorical proof that Cojuangco was the UCPB President and Director **in 1983**. If a contrary conclusion had been reached by the *ponencia* at all, the conclusion was solely based on Cojuangco's allegation in his answer that he served as a public officer **during the Marcos Administration — a period that covered 14 years counting the martial law years alone**. The *ponencia* concluded that it was no longer incumbent upon the Republic to prove that Cojuangco was an officer and member of the governing board of UCPB because he could have adduced contradictory evidence, but failed to do so.[90]

This position, in my view, is untenable. As the plaintiff who made the positive allegation that Cojuangco was a UCPB officer and director in 1983, the Republic has the obligation to prove this fact. What is baffling, however, about this disputed issue is the fact that the **certification of the UCPB corporate secretary — *already in the Republic's possession and annexed to one of its pleadings — was not formally presented as evidence.*** There is nothing in the rules of evidence that shifts the burden of proof on Cojuangco merely because he made a general statement that he served as a public officer during the Marcos Administration. More importantly, ***the Republic did not even state the amount of the UCPB loan which was used to purchase the SMC shares or how many of these shares were purchased with the proceeds of the UCPB loan.*** In contrast with this apparent discrepancy between the Republic's factual allegations and supporting evidence, the plaintiff in *Bailey* had been able to describe in detail the advances taken by the erring director — *i.e.*, when they were taken, the details of his purchase and sale of the relevant shares. Without clarificatory evidence on how much of the UCPB funds were used; and how many shares were acquired; whether Cojuangco was indeed an officer at the time; and how Board approval was made — this Court has no basis to award to the Republic all the shares claimed for reversion.

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[90] *Ponencia*, p. 59.

Supreme Court E-Library

E.3. Violation of single-borrowers limit and DOSRI rules

At the time the alleged transactions took place in 1983, Sections 23 and 83 of the General Banking Act, as amended — *i.e.*, the rules on the single borrower's limit and liabilities of directors, officers, stockholders (*DOSRI*) — were already in place. These Sections respectively state:

Section 23. Except as the Monetary Board may otherwise prescribe, the total liabilities of any person, company, corporation or firm, to a commercial banking corporation for money borrowed, excluding (a) loans secured by obligations of the Central Bank or of the Philippine Government; (b) loans fully guaranteed by the government as to the payment of the principal and interest; (c) loans to the extent covered by holding out on, or assignment of, deposits; and (d) other loans or credits which the Monetary Board may, from time to time, specify as non-risk assets, shall at no time exceed fifteen percent (15%) of the unimpaired capital and surplus of such bank.

The total liabilities of any borrower may amount to a further fifteen (15%) of the unimpaired capital and surplus of such banking corporation provided the additional liabilities are adequately secured by shipping documents, warehouse receipts or other similar documents transferring or securing title covering readily marketable, non-perishable staples, which staples must be fully covered by insurance, and must have a market value equal to at least one hundred and twenty-five percent (125%) of such additional liabilities.

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Section 83. No director or officer of any banking institution shall, either directly or indirectly, for himself or as representative or agent of others, borrow any of the deposits of funds of such bank nor shall he become a guarantor, indorser, or surety for loans from such bank to others, or in any manner be an obligor for moneys borrowed from the bank or loaned by it, except with the written approval of the majority of the directors of the bank, excluding the director concerned. Any such approval shall be entered upon the records of the corporation and a copy of such entry shall be transmitted forthwith to the Superintendent of Banks. The office of any director or officer of a bank who violates the provisions of this section shall immediately become vacant and the director or officer shall be

Supreme Court E-Library

punished with imprisonment of not less than one year nor more than ten years and by a fine of not less than one thousand nor more than ten thousand pesos.

The Monetary Board may regulate the amount of credit accommodations that may be extended, directly or indirectly, by banking institutions to their directors, officers or stockholders. However, the outstanding credit accommodations which a bank may extend to each of its stockholders owning two percent (2%) or more of the subscribed capital stock, its directors, or its officers, shall be limited to an amount equivalent to the respective outstanding deposits and book value of the paid-in capital contribution in the bank: Provided, however, that loans and advances to officers in the form of fringe benefits granted in accordance with the rules and regulations as may be prescribed by Monetary Board shall not be subject to the preceding limitation.

Cojuangco claims exemption from these provisions on the strength of Letter of Instructions No. (*LOI*) 926.[91] I agree with the *ponencia*, however, that Cojuangco cannot seek refuge under this LOI, since the exemption covers only the borrowings of participating oil mills and private corporations organized to serve as instruments to pool and coordinate the resources of the coconut farmers and oil millers, not those of individuals such as Cojuangco or the respondent corporations who acted as nominal stockholders. LOI 926, too, required the loans to be used to finance *capital expenditures*, not investments in shares of stock.

Despite this view, however, I disagree that the Republic successfully established that these provisions were violated or that these laws can be the basis for the return of the SMC

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[91] Section 4. *Financial Borrowings*—All financial borrowings of the private corporation authorized to be organized as well as any Participating Oil Mill to finance their respective capital expenditures including the purchase of spare parts and inventories shall be expeditiously and promptly approved, and such borrowings are hereby ordered exempt from restrictions/limitations: on simple borrowers limitations; and on loans to corporations with interlocking directors, officers, stockholders, related interests and subsidiaries and affiliates, it being understood that such lendings are in effect made to the coconut industry as a whole and not to any particular individual or entity.

shares. To reiterate, the Republic has neither stated nor proved the amount of the UCPB loans taken to purchase the SMC shares or the unimpaired capital or the surplus of UCPB; it utterly failed to support the details of whatever loans had been taken with sufficient evidence. Thus, the Court cannot declare that the 15% limitation under the single borrower's limit was breached. Similarly, there can be no violation of the DOSRI rules where the manner under which the loan was taken was not alleged; the Republic failed to prove whether or not the UCPB board of directors approved the loans in question.

F. Close Association with President Marcos

A close examination of the records fails to reveal any specific allegation, much less proof, that Cojuangco amassed ill-gotten SMC shares because he is a relative or was a close associate of the late President Ferdinand Marcos. While the media may be replete with stories of Cojuangco's close relationship with President Marcos and his family, these stories are not evidence unless testified to by a competent witness or are materials that can be subject of judicial notice. At the most, what appears in the offered evidence in this case are admissions by Cojuangco of the positions he assumed in government, specifically at the PCA and at the UCPB. The Republic's *Reply* dated October 2, 2003, too, contained attached documents indicating the positions he assumed at the UCPB and its allied companies and in the CIIF oil mills or its holding companies. These documents, however, were never marked as exhibits and offered as evidence. Even if they had been so marked and offered, however, these may not suffice to prove "close association" under the standards of the jurisprudence on this point — not every senior official of the Marcos government falls under the category of a "close associate";[92] proof of this type of association has to be adduced. Again, the Republic failed on this point.

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[92] See *Republic v. Migriño*, G.R. No. 89483, August 30, 1990, 189 SCRA 289, 298; *Cruz, Jr. v. Sandiganbayan*, G.R. No. 94595, February 26, 1991, 194 SCRA 474; *Republic v. Sandiganbayan*, G.R. No. 104768, 407 SCRA 10.

Supreme Court E-Library

G. Conclusions

Based on the above considerations, I would agree with Justice Bersamin that the Republic had failed to preponderantly establish its claim. The Republic has taken a significant step in proving a claim for reversion of ill-gotten wealth against Cojuangco, but simply failed to make a complete case leading to that conclusion.

Despite this conclusion, I do not agree that the Court should simply dismiss the petition and affirm the Sandiganbayan's decision. This decision — while seemingly correct on the basis of the evidence presented and recognized — cannot and should not be allowed to bind the Republic in light of the massive violation of its right to due process through the fatal omissions that the Republic's counsels made in handling the case. **In the absence of any clear evidence pointing to a criminal act under the Anti-Graft and Corrupt Practices Act or Republic Act (*RA*) No. 3019, the counsels mishandling of the case should be held responsible for gross negligence. Thus, un urgent point to consider in the review of the records of this case and of the proceedings before the Sandiganbayan is whether the Republic's counsels substantially fulfilled their duty to handle the Republic's case competently and responsibly.** As heretofore discussed, at stake are not only the substantial SMC shares involved but the integrity of government processes and its political will in addressing claimed abuses under the martial law regime.

III. THE REPUBLIC'S CASE AND ITS IMPROPER HANDLING

The *ponencia* justifies its decision to award the subject shares to the petitioner under RA No. 1379[93] and EO No. 1, in relation with EO Nos. 2, 14 and 14-A.

While the Republic alleged its causes of action for violations of RA No. 1379 and EO No. 1 in its complaint, it failed to

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[93] An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by Any Public Officer or Employee.

Supreme Court E-Library

pursue these causes of action and present supporting evidence during the course of the proceedings before the Sandiganbayan. The Republic's ultimately ended up with the charge relating to Cojuangco's loans with UCPB. Even at that, it refused to go to trial; it submitted its case on the basis of an offer of evidence consisting of materials that need not even be offered because they are part of the records or are matters appropriate for judicial notice.

To reiterate *for emphasis* what have heretofore been pointed out, (1) a cause of action duly pleaded was simply abandoned and completely forgotten; (2) materials proposed to be presented as evidence in the pre-trial brief or which were already mentioned in the pleadings were never introduced as evidence; (3) public documents available in governments records do not appear to have been considered; (4) likewise the availability of compulsory processes to compel the attendance of witnesses or the production of records were hardly availed of; (5) clear signals and warnings from the Sandiganbayan and even from the respondents went unheeded or unnoticed; (6) counsels patently exhibited lack of preparation, causing delays at the instance of the Republic; (7) the evidence offered were not evidence at all but were to confined to pleadings already on record, and laws and Supreme Court decisions that can be cited without need of offering them as evidence; and finally, (8) counsels simply refused to go to trial despite an incomplete case. **These are acts or omissions in the handling of the case that cannot be labeled as criminal for lack of clear evidence of the intent to place the government at a disadvantage and of the active motivation that drove this intent, but they can, at the very least, be labeled as gross negligence in the handling of the case, resulting at the Sandiganbayan level, in the denial of a fair opportunity for the government to present a case with a fair chance of achieving the recovery it sought.**

A. Abandonment of, or Negligence in Pursuing, Forfeiture Action under RA No. 1379

Sections 2 and 6 of RA No. 1379 authorize the recovery by the government of unlawfully acquired properties of public officers or employees:

Supreme Court E-Library

Section 2**.** *Filing of petition*. Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired. The Solicitor General, upon complaint by any taxpayer to the city or provincial fiscal who shall conduct a previous inquiry similar to preliminary investigations in criminal cases and shall certify to the Solicitor General that there is reasonable ground to believe that there has been committed a violation of this Act and the respondent is probably guilty thereof, shall file, in the name and on behalf of the Republic of the Philippines, in the Court of First Instance of the city or province where said public officer or employee resides or holds office, a petition for a writ commanding said officer or employee to show cause why the property aforesaid, or any part thereof, should not be declared property of the State: *Provided*, That no such petition shall be filed within one year before any general election or within three months before any special election.

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Section 6. *Judgment* — **If the respondent is unable to show to the satisfaction of the court that he has lawfully acquired the property in question, then the court shall declare such property in question, forfeited in favor of the State, and by virtue of such judgment the property aforesaid shall become the property of the State.** *Provided*, That no judgment shall be rendered within six months before any general election or within three months before any special election. The Court may, in addition, refer this case to the corresponding Executive Department for administrative or criminal action, or both. (Emphasis ours)

Under these provisions, resort to a RA No. 1379 forfeiture action is appropriate if a subject and an object exist under the terms of this law. Specifically, there must be:

(1) A **subject** or a public officer or employee, who is **any person holding any public office or employment** by virtue of an appointment, election or contract, *and* any person holding any office or employment, by appointment or contract, in any State owned or controlled corporation or enterprise;

Supreme Court E-Library

(2) An **object** which refers to **the properties** acquired by the public officer during his incumbency **which are manifestly out of proportion to his salary** as officer and to his other lawful income and the income from legitimately acquired properties.

Procedurally, Section 2 of RA No. 1379, as amended, requires a prior inquiry similar to a preliminary investigation in criminal cases to be made by the Ombudsman before a forfeiture proceeding can be initiated before the Court by the Solicitor General. [94]

In the present case, no prior inquiry appeared to have been conducted. Thus, Cojuangco raised this defense in his *Answer*, together with the time bar in bringing the complaint because of its proximity to an election. **Thereafter, the Republic simply disregarded its RA No. 1379 cause of action and does not appear to have ever undertaken any corrective action to continue to address the lapses that Cojuangco noted in his *Answer*.**

Save for the noted lapses, however, a forfeiture action under RA No. 1379, was a very promising opportunity for government

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[94] In *Republic v. Sandiganbayan* (G.R. No. 90529 August 16, 1991), the Court clarified that the preliminary inquiry required in a RA 1379 forfeiture cases originally given to the city or provincial fiscals are now vested with the Office of the Ombudsman and the jurisdiction over the forfeiture case is vested in the Sandiganbayan. The Court said:

> A perusal of the law originally creating the Office of the Ombudsman then (to be known as the Tanodbayan), and the amendatory laws issued subsequent thereto will show that, at its inception, **the Office of the Ombudsman was already vested with the power to investigate and prosecute civil and criminal cases before the Sandiganbayan and even the regular courts.** xxx
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> Presidential Decree No. 1630 was the existing law governing the then Tanodbayan when Republic Act No. 6770 was enacted providing for the functional and structural organization of the present Office of the Ombudsman. This later law retained in the Ombudsman the power of the former Tanodbayan to investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. In addition, the Ombudsman is now vested with primary jurisdiction over cases cognizable by the Sandiganbayan. xxx

Supreme Court E-Library

to achieve the reversion that it sought. All that is required for this kind of action is to show the concurrence of the following elements:

(1) *the offender is a public officer or employee*;

(2) *he acquired a considerable amount of money or property during his incumbency*; and

(3) *the amount is manifestly out of proportion to his salary as such public officer or employer and to his other lawful income and the income from legitimately acquired property.*

Notably in this regard, the Republic's *Pre-Trial Brief*[95] already mentioned the following documentary evidence:

(1) the **COA reports** (which the Sandiganbayan, however, expressly rejected in its extended Pre-Trial Order);[96]

(2) **Cojuangco's Statements of Assets and Liabilities** (*SAL*) for the years 1973, 1976, 1978, and **1982;**[97] and

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Nonetheless, while we do not discount the authority of the Ombudsman, we believe and so hold that the exercise of his correlative powers to both investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth is restricted only to cases for the recovery of ill-gotten and/or unexplained wealth which were amassed after February 25, 1986. Prior to said date, the Ombudsman is without authority to initiate such forfeiture proceedings. **We, however, uphold his authority to investigate cases for the forfeiture or recovery of such ill-gotten and/or unexplained wealth amassed even before the aforementioned date, pursuant to his general investigatory power under Section 15(l) of Republic Act No. 6770.** (Emphasis ours)

See also *Garcia v. Sandiganbayan and Office of the Ombudsman*, G.R. No. 165835, June 22, 2005 and *Romualdez v. Sandiganbayan*, G.R. No. 161602, July 13, 2010.

[95] Sandiganbayan Records, Volume 6, pp. 29-60.

[96] *Rollo* (G.R. No. 180702) Volume I, p. 97; Sandiganbayan Records, Volume 6, pp. 223-237.

[97] Sandiganbayan Records, Volume 6, pp. 839-846.

Supreme Court E-Library

(3) a **Summation Analysis of the Wealth and Income** of Cojuangco.[98]

These were good starting points for a RA No. 1379 action as many other documentary evidence proving the elements of a forfeiture action are public documents that were already with, or could then easily be accessed by, the Republic. Notably, the Republic had in its possession proof that Cojuangco was a public officer and an admission that he was the beneficial owner of the shares. It would also seem that the PCGG had access to the SAL that Cojuangco filed during his incumbency and could have accessed other relevant documents through compulsory process.

With these documentary evidence on hand or within reach, the Republic chose to actively pursue another cause of action — breach of fiduciary duties of a director, but likewise failed to present crucial evidence therefor, particularly the loan documents evidencing the loans that Cojuangco wrongfully obtained as director. Interestingly, even the above-listed documents were not among those offered as evidence through the Republic's *Manifestation of Purpose*. Notably missing, too, were Cojuangco's SAL for the **year 1983** (the year when he acquired the disputed SMC shares) and the testimony of those who prepared the COA reports (after the Sandiganbayan belittled the probative value of the COA reports in its denial of the motion for summary judgment), separately from the RA 1379 cause of action, these could have been useful evidence to establish the misuse of the coconut levy funds and establish the damage to the Republic through proof of Cojuangco's unjust enrichment.

B. Gross Negligence in Pursuing Recovery Action under EO No. 1

EO No. 1, in relation with EO Nos. 2, 14 and 14-A, is another law that authorizes the government to recover ill-gotten wealth. A recovery action under EO No. 1 requires

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[98] *Id.* at 847.

Supreme Court E-Library

(1) a subject defendant, which refers to the former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and **close associates.**

(2) an object or the ill-gotten wealth, which refers to assets and properties (in the form of bank accounts, deposits, trust accounts, shares of stocks, buildings, shopping centers, condominium, mansions, residences, estates, and other kinds of real and personal properties in the Philippines and in various countries) belonging to the defendants. This can include business enterprises and associations owned or controlled by the defendants, during the Marcos administration, directly or through nominees;

(3) the mode of acquisition, through which the ill-gotten wealth was acquired, directly or indirectly,

(a) through or as a result of the improper or illegal use of or conversion of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or

(b) by taking undue advantage of their office, authority, influence, connections or relationship.

(4) prejudice to the government, as the act/s of the defendant/s result in their unjust enrichment and causing grave damage to the Filipino people and the Republic of the Philippines.

RA No. 1379 and EO No. 1 differ in two respects: (1) in the subjects or the persons covered, and (2) in the object sought to be forfeited or recovered. While RA No. 1379 broadly covers *all public officers*, EO No. 1 is confined to President Marcos, his immediate family, relatives, subordinates and close associates. Unlike EO No. 1, RA No. 1379 is not concerned with the manner of acquisition of the unlawfully acquired property. Despite these differences, both laws provide basis for the recovery or forfeiture of properties that rightfully belong to the State.

A reading of the complaint shows that the Republic's action for recovery under EO No. 1 of the Cojuangco block of SMC shares was premised on Cojuangco's act of supposedly *taking undue advantage of official position or authority*, resulting in his unjust enrichment and grave damage and prejudice to the State. Thus, **it was crucial for the Republic to prove that, at the time the subject shares were acquired, Cojuangco occupied an official position.**

While Cojuangco admitted that he (a) served as PCA Director and as President and Director of the UCPB; (b) acquired the SMC shares in 1983 and (c) used proceeds of loans and advances from UCPB and the CIIF Oil Mills, the Republic's submitted evidence and Cojuangco's admissions did not sufficiently prove that the details that EO No. 1 required, specifically, the period of Cojuangco's service as a public officer; the details of the loans and advances secured; whether and how much of these loans and advances funded the purchase of SMC shares; the details of the purchases made, when, by whom, for how much; the unjust enrichment on the part of Cojuangco and the prejudice to the government, in the manner done in *Bailey*.[99]

All these omissions cannot but be evidentiary gaps resulting from the counsel's gross negligence that should preclude the Court from entering a judgment of forfeiture in favor of the government.

C. Judicial Warnings on the Completeness of the Petitioner's Case

At the scheduled pre-trial conference on May 24, 2000, the Sandiganbayan apparently forewarned the Republic that the court "has not been adequately enlightened as to the basis for [its] claims"[100] in its *Third Amended Complaint* in Civil Case No. 0033-F. Pertinently, the Sandiganbayan held:

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[99] *Supra* note 89.

[100] Sandiganbayan Records, Volume 7, pp. 228-229.

Supreme Court E-Library

The Court has remonstrated with the plaintiff, insofar as its adequacy is concerned, xxx It appears to this Court at this time that the failure of the plaintiff to have available responses and specific data and documents at this stage xxx arises from the fact that at this very stage, **the plaintiff through its counsel does not know what these documents are, where these documents will be and is still anticipating a submission or a delivery thereof by COA at an undetermined time.** xxx

xxx the Court is given a very clear impression that **the plaintiff does not know what documents will be or whether they are even available to prove the causes of action** in the complaint.[101] [Emphasis ours]

As the developments in the case showed, the Republic's counsel did not heed these strong words from the Sandiganbayan and persisted in its irresponsible ways.

Before the date of trial was set, the Republic successively moved for judgment on the pleadings and/or partial summary judgment concerning (i) the CIIF block of shares on July 26, 2002,[102] and (ii) the Cojuangco block of shares on July 11, 2003.[103] While the Sandiganbayan granted the Republic's motion on May 7, 2004 with respect to the CIIF block of shares and ordered their reconveyance in favor of the government,[104] the Sandiganbayan denied the Republic's motion with respect to the Cojuangco block of shares on the ground that there were "genuine factual issues" that needed to be tried. The Sandiganbayan in fact cited all the matters it considered (quoted at page 13 hereof) disputed, referring specifically to the sources of funds, nature of the sources, the details of the positions Cojuangco occupied in government, and details about Cojuangco's abuse of position and close association with President Marcos. The Sandiganbayan even reminded the Republic about its view that —

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[101] *Id.* at 227-231.

[102] *Id.*, Volume 9, p. 205.

[103] *Id.*, Volume 10, p. 634.

[104] *Id.*, Volume 9, pp. 517-521.

Supreme Court E-Library

We cannot agree with the plaintiff's contention that the defendants' statements in his Pre-Trial Brief regarding the presentation of a possible CIIF witness as well as UCPB records, can already be considered as admissions *of the defendant's exclusive use and misuse of coconut levy funds to acquire the subject SMC shares and defendant Cojuangco's alleged taking advantage of his positions to acquire the subject SMC shares.*[105]

When trial was finally conducted more than four months after the Sandiganbayan set the case for trial,[106] the Republic inexplicably chose not to present testimonial evidence, despite the numerous witnesses and documents it proposed to present in its *Pre-Trial Brief* and the clear warnings the Sandiganbayan had aired. Instead, the Republic filed a Manifestation of Purpose and asked for the marking of certain exhibits, which it asked the Sandiganbayan to take judicial notice of[107] and which the Sandiganbayan chose to regard as the Republic's offer of evidence. These exhibits consisted of **four pleadings**, which were already part of the records, **three laws** and **two Supreme Court decisions.** In effect, the Republic presented as evidence documents that did not even have to be formally offered because they would have been admissible under judicial admissions and judicial notice.

What the Republic offered as evidence appears noticeably irregular, when compared with the evidence already in its possession as reflected in its pre-trial brief, specifically: (**1**) the Secretary's Certificate of UCPB and CIIF Oil Mills stating that Cojuangco was an officer and director of these entities in 1983; (**2**) Affidavits, Blank Declarations of Trust, and Voting Trust Agreements executed by the directors of the respondent corporations disclosing, for all intents and purposes, that they merely held the subject shares for Cojuangco; (**3**) Cojuangco's Statement of Assets and Liabilities (*SAL*) for the years 1973, 1975, 1978 and 1982. The Summation Analysis of Wealth and Income, a report prepared by PCGG and a part of the annexes

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[105] *Id.*, Volume 13, pp. 502-516.

[106] *Id.*, Volume 16, pp. 384-387.

[107] *Id.*, Volume 17, p. 89.

Supreme Court E-Library

of the Republic's *Pre-Trial Brief*, implies that the PCGG had records of Cojuangco's SAL from 1967 to 1985. Additionally, the COA's report on UCPB, dated 1986, referred to the financial statements of UCPB, which could have helped to determine whether or not the loans extended to Cojuangco violated the DOSRI or the single borrower's limit.

Another extreme irregularity was the Republic's **failure to produce and offer the loan documents** as evidence, given that the Republic's claim is dependent on the theory that the SMC shares were acquired with UCPB loans. These documents would have definitely established the dates the loans were granted, the amounts and terms of the loans, and even the approving authorities who participated in the grant of the loan. In 1986, the Republic had control of the UCPB and would have had access to these loan agreements. If the loan documents could no longer be found, other documents such as the financial statements and the reports to the Central Bank would have referred to the loan transactions which might have amounted to at least $49 million, if the Republic's Third Amended Complaint were to be believed. If the loan documents had been lost, a manifestation in the Sandiganbayan would have been proper, as well as a demand for the respondents to produce loan documents, given that they had admitted to the loan transactions. Instead, the records are jarringly silent about these loan documents. What is true for the UCPB loan documents applies as well to advances from the CIIF Oil Mills which could not have been simply drawn without supporting documentation.

Lastly, it must be pointed out that the Republic was not definite in identifying the number of shares that it sought to claim. The *Third Amended Complaint* refers to 16,276,545 shares; Cojuangco's *Pre-Trial Brief* refers to an Annex "B" showing that there were 20,693,980 shares; and the Republic's *Pre-Trial Brief* refers to 27,198,545 shares. The records are likewise devoid of any details relating to the acquisition of the SMC shares; the Republic failed to allege, much less prove, their acquisition cost or even their acquisition dates, and when the purported stock splits occurred or the stock dividends were

Supreme Court E-Library

distributed. These failures happened despite the clear suggestions from respondent's counsel – Atty. Estelito Mendoza – that while loans were secured, the details of the grant of the loans were not admitted.[108] The Republic could have easily asked for the subpoena of the stock transfer books or other pertinent records of SMC, but chose not to do so.

To summarize, the records of the proceedings before the Sandiganbayan show that the Republic had not presented relevant evidence within its possession and crucial evidence that it could have obtained. It also neglected to pursue a cause of action that it could have proven or take corrective action to continue to pursue this cause of action. The stubborn refusal of the Republic despite the warnings of the Sandiganbayan during pre-trial and thereafter, cannot be considered as anything but gross negligence. The question of whether the government's counsel can so prejudice the government's claim for recovery of valuable assets through the gross negligence of its counsel must be addressed by this Court as a measure to secure a full determination and closure of this case.

IV. NEGLIGENCE AND DUE PROCESS CONSIDERATIONS

A. Gross Negligence of Counsel and its Effects

That negligence of counsel binds the client is a strong and settled rule in jurisprudence. This is based on the rule that any act performed by a counsel within the scope of his general or implied authority is regarded as an act of his client. Consequently, the mistake or negligence of counsel may result in the rendition of an unfavorable judgment against the client.[109] The reason for this rule is to avoid the foreseeable tendency of every losing party to raise the negligence of his or her counsel to escape an adverse decision; experience shows that very few graciously accept a losing verdict and parties would go to great lengths

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[108] *Rollo* (G.R. No. 169203), p. 356.

[109] *Multi-Trans Agency Philippines, Inc. v. Oriental Assurance Corporation*, G.R. No. 180817, June 23, 2009.

Supreme Court E-Library

and seize every opportunity to avoid a loss, although the attempt at evasion is to the detriment of justice and our justice system.[110]

It is equally settled, too, with the same strength and emphasis that once the rule on mistake or negligence of counsel deserts its proper office as an aid to justice, and on the contrary becomes a hindrance and its chief enemy, the rigors of the rule must be relaxed to admit of exceptions and thereby prevent a miscarriage of justice. In other words, the Court has the power to consider a particular case an exception to the operation of the negligence of counsel rule whenever the purposes of justice require it. What should guide judicial action as a norm is that a party should be given the fullest opportunity to establish the merits of his action or defense, rather than allow him to lose life, honor or property because of technicalities or acts or omissions that denied him of his day in court.

Thus, the rule that the negligence of counsel binds the client admits of exceptions. The recognized exceptions are: (1) where reckless or gross negligence of counsel deprives the client of due process of law, (2) when its application will result in outright deprivation of the client's liberty or property or (3) where the interests of justice so require. In such cases, courts must step in and accord relief to a party-litigant.[111]

Gross negligence has been defined as the want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It is the thoughtless disregard of consequences without exerting any effort to avoid them.[112]

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[110] Paraphrase of the words of Justice Bellosillo in his Dissenting Opinion in *Legarda v. Court of Appeals,* G.R. No. 94457, October 6, 1997.

[111] *Callangan v. People of the Philippines,* G.R. No. 153414, June 27, 2006; *Multi-Trans Agency Philippines, Inc. v. Oriental Assurance Corporation,* G.R. No. 180817, June 23, 2009; *People's Homesite & Housing Corporation v. Tiongco,* 12 SCRA 471; *Escudero v. Dulay,* G.R. No. 60578, February 23, 1988; and *Apex Mining, Inc. v. Court of Appeals,* G.R. No. 133750, November 29, 1999.

[112] *Multi-Trans Agency Philippines, Inc. v. Oriental Assurance Corporation,* G.R. No. 180817, June 23, 2009.

Supreme Court E-Library

In this case, the omissions of Republic's counsel in handling its case has heretofore been itemized and discussed and need not be mentioned again. Suffice it to say that its failure to present evidence it had in its possession and those that it could have easily availed of, considered alone, already amounted to an abandonment or total disregard of its case. They show conscious indifference to or utter disregard of the possible adverse repercussions to the client. Such chronic inaction was present in this case when the Republic's counsel exhibited it as early as the pre-trial, at its motion for summary judgment where no less than the Sandiganbayan commented on the state of the counsel's preparation, and in the all-important presentation of evidence stage when counsel, without much thought, marked as evidence materials that need not even be marked and offered as evidence, and thereafter refused to go to trial. These acts cannot but constitute gross negligence.[113]

In *Government Service Insurance System (GSIS) v. Bengson Commercial Buildings*,[114] the Court pointed out that a pattern of fraud is evident when GSIS's counsel opted not to present evidence to contradict the plaintiff's evidence. Additionally, its abandonment of a cause of action without any apparent reason signifies the counsel's unbecoming disregard for the outcome of the case.

The uniqueness of the negligence in this case lies in the patent ineptitude that counsel for the Republic committed, as it passively allowed the government to be stripped of its interests in valuable assets claimed to be ill gotten wealth. The glaring errors of the counsel for the Republic were not minor errors in the exercise of discretion; the voluminous records of this case are replete with instances when counsel's attention was called concerning gaps in its case and its evidence, both by the Sandiganbayan and by the respondents. The Sandiganbayan even noted the apparent ignorance of the Republic's counsel regarding the case

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[113] *Callangan v. People of the Philippines*, G.R. No. 153414, June 27, 2006.

[114] G.R. No. 141454, January 31, 2002.

Supreme Court E-Library

that it handled — its inability, despite the lapse of a substantial length of time, to respond to the questions of the Sandiganbayan and to identify the documents that it would present. These warnings alone should serve as a gauge to the Court of how egregious the negligence had been.

The party aggrieved in this case, it must be remembered, is not an ordinary client; it is the Republic of the Philippines. Unlike other parties who may cry out and insist on changing an incompetent counsel in order to protect its claims, the Republic cannot as easily do so. It is bound by law to rely on the skill, honesty, and diligence of the agency assigned to represent it.

Under these circumstances, it becomes the duty of the Court to ensure that the Republic is not prejudiced by a grossly incompetent or negligent counsel and is not thereby cheated out of its proper claims. For this Court to gloss over this incompetence, negligence, apathy and unconcern, and not to act on what clearly appears to be an aberrant situation, would simply run counter to its duty to uphold justice. If the incompetence, ignorance or inexperience of counsel is so great and his errors are so serious that the client who otherwise has a good cause, is prejudiced and denied his day in court, the litigation may be reopened to give the client another chance to present his case.[115]

The fundamental purpose of procedural rules is to afford each litigant every opportunity to present evidence in their behalf in order that substantial justice is achieved. Court litigations are primarily for the search of truth, and a liberal interpretation of the rules by which both parties are given the fullest opportunity to adduce proofs is the best way to ferret out such truth.[116] While we cannot but find in this case that the Republic presented insufficient evidence to support its claim, we also find in the records pieces of evidence indicating that there is much more

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[115] *Apex Mining, Inc. v. Court of Appeals*, G.R. No. 133750, November 29, 1999.

[116] *Sarraga v.Bangko Filipino Savings and Mortgage Bank*, 442 Phil 55 (2002).

Supreme Court E-Library

to the Republic's claim than was presented by the Republic's counsel.

While the Republic as a litigant should be bound by the mistake or negligence of its counsel, this should not be our conclusion in this case where the negligence, from every perspective, is gross and has effectively deprived the Republic of its day in court.

As a last word on this point, our jurisprudence teaches us that the State is never estopped from questioning the acts of its officials, if they are erroneous,[117] and more so if they are irregular. Such acts involve plain bureaucratic venality which leaves large and easily identifiable traces of neglect of duty. In *Republic v. Aquino*,[118] we applied this principle to the failure of the government to oppose an application for land registration. In *Sharp International Marketing v. Court of Appeals*,[119] we held that the government is not bound by a highly irregular contract entered into by a former Secretary. We also declared, in *Heirs of Reyes v. Republic*,[120] that even if the Office of the Solicitor General failed to question a patently unconstitutional compromise agreement between the Director of Lands and Forest Development with private individuals, the government cannot be bound by it; we branded the acts of the government agent as a "blatant abandonment of their [duties]" and a display of their "gross incompetence."

B. The Demands of Due Process

Traditionally, the due process clause is invoked to prevent governmental encroachment against life, liberty, and property of individuals; to secure the individual from the arbitrary exercise

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[117] *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 106611, July 21, 1994; *Heirs of Reyes v. Republic*, G.R. No. 150862, August 3, 2006 and *Sharp International Marketing v. Court of Appeals*, G.R. No. 93661, September 4, 1991.

[118] L-33983, January 27, 1983.

[119] *Supra* note 17.

[120] *Supra* note 17.

Supreme Court E-Library

of the powers of the government; to protect property from confiscation by legislative enactments, from seizure, forfeiture, and destruction without holding a trial and conviction by the ordinary mode of judicial procedure; and *to secure to all persons equal and impartial justice and the benefit of the general law*.[121] The clause came into being as a limit to the government's inherent police power, not primarily to protect the interests of government whose power to protect itself is primary, overriding and inherent.

In this case, the government comes before this Court, not as a sovereign, but as an ordinary litigant. The government seeks to recover what it claims to be property that should belong to the Filipino people, particularly to the coconut farmers, and to redress what it claims to be abuses committed during an unusual period in the country's history — the martial law years. That the recovery and redress are important government interests is evident from the extraordinary steps that the government has already taken pursuant to its inherent sovereign powers to address the aftermath of the martial law years; pursuant to its police power, the government has allowed the seizure and sequestration of wealth *prima facie* found to be ill-gotten during the martial law years, so that these properties can be preserved for appropriate judicial process.

In this judicial process, the government yields its character as sovereign and operates under equal terms with the owners of sequestered properties; it submits itself to the same rights and opportunities that every other litigant enjoys in a court case. The most basic of these rights is the right to due process — the right to be heard and to be given the opportunity to present and defend one's cause.

As these discussions show, the Sandiganbayan denied the government's claim for recovery, not because the government did not have any right under the law to recover ill-gotten wealth. **The government lost because of the acts of its counsel that amounted to no less than giving the claim away through omission, inaction or precipitate and ill-considered action**

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[121] *City of Manila v. Laguio*, 455 SCRA 308 (2005).

that, at the very least, should be considered gross negligence of counsel in handling the government's case. Under these circumstances, the government — like, any other litigant — should be allowed to invoke the same due process right that individuals invoke to secure an equal and impartial justice under the law.

The requirements of due process are satisfied if the following conditions are present: (1) there is a court or tribunal clothed with judicial power to hear and determine the matter before it; (2) jurisdiction is lawfully acquired over the person of the defendant or over the property which is the subject of the proceedings; (3) the defendant is given an opportunity to be heard; and (4) judgment is rendered upon a lawful hearing.[122] Substantively, what underlies due process is the rule of reason; it is a rule against arbitrariness and injustice measured under the standards of reason.[123] Procedurally, the fundamental requirement of due process involves the opportunity to be heard at a meaningful time and in a meaningful manner.[124] Whether in the substantive or in the procedural signification, due process must comport with the deepest notions of what is fair and right and just.[125]

On a superficial consideration, the proceedings before the Sandiganbayan appear to have complied with all that due process demands in a judicial proceeding. The Sandiganbayan granted the government the opportunity to be heard and was not remiss in reminding the Republic's counsel of its view of the status of the government's case. That counsel chose to formally offer as evidence documents that were already on record or subject to judicial notice, and that it miserably failed to support its

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[122] *Banco Espanol-Filipino v. Palanca*, 37 Phil. 921 (1918).

[123] *Habana v. National Labor Relations Commission*, G.R. No. 129418, September 10, 1999.

[124] Rene B. Gorospe, *Constitutional Law*, Volume 1, 2006 edition, p. 80, citing *Matthews v. Eldridge*, 424 US 319, 333 (1975).

[125] Rene B. Gorospe, *Constitutional Law*, Volume 1, 2006 edition, p. 80, citing *Agabon v. National Labor Relations Commission*, 442 SCRA 573 (2004), pp. 611-12.

Supreme Court E-Library

stated claims, do not appear to be a violation of the requirements of procedural due process. However, ***the right to due process in our legal system does not merely rely on technical and pedantic application of procedural formalities; it involves as well the consideration of the substance of the affected underlying rights whose denial under unreasonable circumstances is equivalent to the loss of day in court that is entitled to redress and correction to afford justice to all.***[126]

The denial, as it transpired in this case, is unique but is not any less a basic and inherent unfairness. The Court is now faced with a situation where the conclusions of the Sandiganbayan are valid, *based on the evidence formally offered,* but are contradicted by existing evidence that counsel chose not to offer and evidence that, by omission, it chose not to explore. Effectively, it is a situation of abandonment by the Republic's counsel of causes of action that it could have successfully proven, and the loss by government of a real opportunity to be heard, especially after its counsel opted not to pursue its remedies under RA No. 1379 and after it obstinately refused to present the most basic documents to prove its claim under EO No. 1 despite the dire warnings of the Sandiganbayan. The Court stands to participate in this unfairness and injustice if it stands idly and let the government be deprived of valuable assets, or the chance to prove its interest in these assets, knowing fully well the gross incompetence and negligence of its counsel that brought on the injustice.

If the Court is convinced that gross injustice transpired brought on by the failure on the part of the Republic to present its case due to the gross negligence of its counsel, an outright dismissal of the present petition would not comply with the due process requirements enshrined in our Constitution. Let it be noted that the Republic's case is not totally without merit. Records are replete with indications that a meritorious case can be made out for the recovery sought if only the Republic can have its day in court. ***Under these circumstances, the Court's remedy***

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[126] *Philippine National Construction Corporation v. National Labor Relations Commission,* 292 SCRA 266 (1998).

Supreme Court E-Library

can be no less than a continuation of the proceedings of this case through its remand of the case for a full-blown trial on the merits in proceedings that accord the government a real chance to present all of its evidence.

To be sure, the Court is not wanting in authority to impose this remedy; it is a well-established and accepted doctrine that rules of procedure may be modified at any time to become effective at once, so long as the change does not affect vested rights.[127] In short, this Court can adapt the rules of procedure, as its response to the duty and obligation to act in the higher interests of justice.

In its Third Amended Complaint, the Republic included in its prayer "such further relief as may appear to the Honorable Court to be just and equitable under the premises."[128] This Court has always been disposed to grant equitable relief to parties aggrieved by perfidy, fraud, reckless inattention and the downright incompetence of lawyers whose consequence is the deprivation of their clients' day in court.[129] Following this lead, a remand of the case to the Sandiganbayan for further hearing on the evidence of both parties is only proper. The remand would permit the Republic to properly present its case in accordance with the dictates of due process, and the courts to decide this important case based on real evidence and not merely by the omissions on the part of the Republic's counsel.

To reiterate what is at stake is not only public property of significant value may be involved, this case also marks a crucial step in our people's quest for integrity and accountability in our public officers. The sheer importance of this case to our nation requires that the case be remanded to the Sandiganbayan for hearing so that the petitioner, the Republic of the Philippines, may be afforded its proper day in court through competent counsels whose integrity are beyond question.

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[127] *Zulueta v. Asia Brewery, Inc.*, G.R. No. 138137, March 8, 2001.

[128] *Rollo* (G.R. No 180702) Volume II, p. 162.

[129] *Apex Mining, Inc. v. Court of Appeals*, G.R. No. 133750, November 29, 1999.