Supreme Court E-Library

EN BANC

[G.R. No. 152578. November 23, 2005]

REPUBLIC OF THE PHILIPPINES, Represented by the Presidential Commission on Good Government, *petitioner, vs.* **ESTATE OF HANS MENZI (Through its Executor, MANUEL G. MONTECILLO), EMILIO T. YAP, EDUARDO M. COJUANGCO, JR., ESTATE OF FERDINAND MARCOS, SR., and IMELDA R. MARCOS,** *respondents.*

[G.R. No. 154487. November 23, 2005]

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

[G.R. No. 154518. November 23, 2005]

ESTATE OF HANS M. MENZI (Through its Executor, Manuel G. Montecillo), and HANS M. MENZI HOLDINGS AND MANAGEMENT, INC. (HMHMI), *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES, (represented by the PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT),** *respondents*.

SYLLABUS

1. COMMERCIAL LAW; CORPORATION LAW; CORPORATION CODE; STOCK CORPORATIONS; STOCKS AND STOCKHOLDERS; CERTIFICATE OF STOCK AND TRANSFER OF SHARES; THE DELIVERY OF A DULY INDORSED STOCK CERTIFICATE IS SUFFICIENT TO TRANSFER OWNERSHIP OF SHARES OF STOCK.— The Corporation Code acknowledges that the delivery of a duly indorsed stock certificate is sufficient to transfer ownership of shares of stock in stock corporations. Such mode of transfer is valid between the parties. In order to bind third persons, however, the transfer must be recorded in the books of the corporation.

Supreme Court E-Library

xxx The absence of delivery is a fatal defect which is not cured by mere execution of a deed of assignment.

2. REMEDIAL LAW; COURTS; SUPREME COURT; NOT A TRIER OF FACTS.— The Supreme Court is not a trier of facts. It is not our function to examine and weigh all over again the evidence presented by the parties in the proceedings before the Sandiganbayan.

3. ID.; EVIDENCE; QUANTUM OF PROOF; PREPONDERANCE OF EVIDENCE; THE DEGREE OF EVIDENCE REQUIRED OF A PARTY IN ORDER TO SUPPORT HIS CLAIM IN CIVIL CASES.— 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.

4. ID.; ID.; BURDEN OF PROOF; RESTS ON THE PARTY WHO ALLEGES A FACT.— 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."

5. COMMERCIAL LAW; CORPORATION LAW; CORPORATION CODE; STOCK CORPORATIONS; STOCKS AND STOCKHOLDERS; STOCK CERTIFICATE; THE PRESENCE OR ABSENCE THEREOF DOES NOT AFFECT THE RIGHT

Supreme Court E-Library

OF THE REGISTERED OWNER TO DISPOSE OF THE SHARES COVERED BY THE STOCK CERTIFICATE.— A stock certificate is merely a tangible evidence of ownership of shares of stock. Its presence or absence does not affect the right of the registered owner to dispose of the shares covered by the stock certificate. Hence, as registered owners, Campos and Zalamea validly ceded their shares in favor of the Government. This assignment is now a *fait accompli* for the benefit of the entire nation.

6. POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; EXECUTIVE ORDER NO. 1; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT; NOT EMPOWERED TO SELL SEQUESTERED ASSETS WITHOUT PRIOR SANDIGANBAYAN APPROVAL; EXCEPTION; PRESENT IN CASE AT BAR.— While it is true that the PCGG is not empowered to sell sequestered assets without prior Sandiganbayan approval, this case presents a clear exception because this Court itself, in the Teehankee Resolution, directed the PCGG to accept the cash deposit offered by Bulletin in payment for the Cojuangco and Zalamea sequestered shares subject to the alternatives mentioned therein and the outcome of the remand to the Sandiganbayan on the question of ownership of these sequestered shares.

7. CIVIL LAW; DAMAGES; ACTUAL OR COMPENSATORY DAMAGES; CANNOT BE AWARDED WITHOUT PROOF OF PECUNIARY LOSS.— An award of actual or compensatory damages requires proof of pecuniary loss. In this case, the Republic has not proven with a reasonable degree of certainty, premised on competent proof and the best evidence obtainable, that it has suffered any actual pecuniary loss by reason of the acts of the defendants. Hence, actual or compensatory damages may not be awarded.

8. ID.; ID.; MORAL, TEMPERATE, NOMINAL AND EXEMPLARY DAMAGES; WHEN AWARDED.— [W]hile no proof of pecuniary loss is necessary in order that moral, temperate, nominal and exemplary damages may be adjudicated, proof of damage or injury should nonetheless be adduced. As found by the Sandiganbayan, however, the Republic failed to show the factual basis for the award of moral damages and its

Supreme Court E-Library

causal connection to defendants' acts. Thus, moral damages, which are designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer, may not be awarded. Temperate, nominal, and exemplary damages, attorney's fees, litigation expenses and judicial costs may likewise not be adjudicated for failure to present sufficient evidence to establish entitlement to these awards.

APPEARANCES OF COUNSEL

The Solicitor General for the Republic of the Philippines.
Francis Gaw for Emilio T. Yap.
Siguion Reyna Montecillo & Ongsiako for Estate of Hans Menzi.
Estelito P. Mendoza for E. M. Cojuangco.
Roberto A.C. Sison for Imelda R. Marcos.

D E C I S I O N

TINGA, *J.*:

In the hope-filled but problem-laden aftermath of the EDSA Revolution, President Corazon C. Aquino issued Executive Order (EO) No. 1, creating the Presidential Commission on Good Government (PCGG) tasked with, among others, the recovery of all ill-gotten wealth accumulated by former President Ferdinand Marcos, his immediate family, relatives, subordinates and close associates. This was followed by EO Nos. 2 and 14, respectively freezing all assets and properties in the Philippines in which the former President, his wife, their close relatives, subordinates, business associates, dummies, agents or nominees have any interest or participation, and defining the jurisdiction over cases involving the ill-gotten wealth. Pursuant to the executive orders, several writs of sequestration were issued by the PCGG in pursuit of the reputedly vast Marcos fortune.

Following a lead that Marcos had substantial holdings in Bulletin Publishing Corporation (Bulletin), the PCGG issued a Writ of Sequestration dated April 22, 1986, sequestering the

Supreme Court E-Library

shares of Marcos, Emilio T. Yap (Yap), Eduardo M. Cojuangco, Jr. (Cojuangco), and their nominees and agents in Bulletin.

This was followed by another Writ of Sequestration issued on February 12, 1987, this time sequestering the shares of stock, assets, properties, records and documents of Hans Menzi Holdings and Management, Inc. (HMHMI).

The Republic then instituted before the Sandiganbayan on July 29, 1987, a complaint for reconveyance, reversion, accounting, restitution and damages entitled *"Republic of the Philippines v. Emilio T. Yap, Manuel G. Montecillo, Eduardo M. Cojuangco, Jr., Cesar C. Zalamea, Ferdinand E. Marcos and Imelda R. Marcos"* and docketed as Civil Case No. 0022. The complaint substantially averred that Yap knowingly and willingly acted as the dummy, nominee or agent of the Marcos spouses in appropriating shares of stock in domestic corporations such as the Bulletin, and for the purpose of preventing disclosure and recovery of illegally obtained assets. It also averred that Cesar Zalamea (Zalamea) acted, together with Cojuangco, as dummies, nominees and/or agents of the Marcos spouses in acquiring substantial shares in Bulletin in order to prevent disclosure and recovery of illegally obtained assets, and that Zalamea established, together with third persons, HMHMI which acquired Bulletin.

On March 10, 1988, the complaint was amended joining Cojuangco as Zalamea's co-actor instead of mere collaborator. The complaint was amended for the second time on October 17, 1990. The amendment consisted of dropping Zalamea as defendant in view of the Deed of Assignment dated October 15, 1987 which he executed, assigning, transferring and ceding to the Government the 121,178 Bulletin shares registered in his name. These shares, as will be explained forthwith, formed part of the 214,424.5 shares (214 block) which became the subject of a case[1] that reached this Court.

---

[1] *Bulletin Publishing Corporation v. PCGG*, No. L-79126, April 15, 1988, 160 SCRA 716.

Supreme Court E-Library

The Second Amended Complaint also included the Estate of Hans M. Menzi (Estate of Menzi), through its executor, Atty. Manuel G. Montecillo (Atty. Montecillo), as one of the defendants.

The issues presented for resolution as stated in the Sandiganbayan's Pre-Trial Order dated November 11, 1991 were:

1) Whether or not the sale of 154,470 shares of stock of Bulletin Publishing Co., Inc., subject of this case by the late Hans M. Menzi to the U.S. Automotive Co. Inc. is valid and legal; and

2) Whether or not the shares of stock of Bulletin Publishing Co. Inc. registered and/or issued in the name of defendants Emilio T. Yap, Eduardo Cojuangco, Jr., Cesar Zalamea and the late Hans M. Menzi (and/or his estate and/or his holding company, HM Holding & Investment Corp.) are ill-gotten wealth of the defendants Marcos spouses.

Make of record the oral manifestation of Atty. Estelito Mendoza, counsel for defendant Eduardo Cojuangco. That: (a) whether or not the said 154,470 shares of stock of Bulletin Publishing Co. Inc. legally belonged to the late Hans Menzi before he sold the same to U.S. Automotive Co. Inc. and (b) whether or not plaintiff Republic is entitled to the same, should also be threshed out during the trial on the merits.[2]

After protracted proceedings which spawned a number of cases[3] that went up to this Court, the Sandiganbayan rendered a *Decision*[4] dated March 14, 2002,[5] the dispositive portion of which states:

---

[2] As quoted in the assailed *Decision;* G.R. No. 152578 Vol. I *Rollo*, pp. 10-51, at 12.

[3] *Bulletin Publishing Corporation v. PCGG*, No. L-79126, April 15, 1988, 160 SCRA 716; *Republic v. Sandiganbayan*, G.R. No. 135789, January 31, 2002, 375 SCRA 425; *Republic v. Sandiganbayan*, G.R. No. 107377.

[4] *Supra* note 2. The *Decision* was penned by Associate Justice Rodolfo G. Palattao and concurred in by Associate Justices Narciso S. Nario and Nicodemo T. Ferrer.

[5] Though dated March 5, 2002, the *Decision* was actually promulgated on March 14, 2002.

Supreme Court E-Library

WHEREFORE, judgment is hereby rendered:

1. Declaring that the following Bulletin shares are the ill-gotten wealth of the defendant Marcos spouses:

A. The 46,626 Bulletin shares in the name of defendant Eduardo M. Cojuangco, Jr., subject of the Resolution of the Supreme Court dated April 15, 1988 in G.R. No. 79126.

Pursuant to alternative "A" mentioned therein, plaintiff Republic of the Philippines through the PCGG is hereby declared the legal owner of these shares, and is further directed to execute, in accordance with the Agreement which is entered into with Bulletin Publishing Corporation on June 9, 1988, the necessary documents in order to effect transfer of ownership over these shares to the Bulletin Publishing Corporation.

B. The 198,052.5 Bulletin shares in the names of:

No. of Shares	
Jose Y. Campos	90,866.5
Eduardo M. Cojuangco, Jr.	90,877
Cesar C. Zalamea	16,309
Total	198,052.5

which they transferred to HM Holdings and Management, Inc. on August 17, 1983, and which the latter sold to Bulletin Publishing Corporation on February 21, 1986. The proceeds from this sale are frozen pursuant to PCGG's Writ of Sequestration dated February 12, 1987, and this writ is the subject of the Decision of the Supreme Court dated January 31, 2002 in G.R. No. 135789.

Accordingly, the proceeds from the sale of these 198,052.5 Bulletin shares, under Philtrust Bank Time Deposit Certificate No. 136301 dated March 3, 1986 in the amount of ₱19,390,156.68 plus interest earned, in the amount of ₱104,967,112.62 as of February 28, 2002, per Philtrust Bank's Motion for Leave to Intervene and to consign the Proceeds of Time Deposits of HMHMI, filed on February 28, 2002 with the Supreme Court in G.R. No. 135789, are hereby declared forfeited in favor of the plaintiff Republic of the Philippines.

2. Ordering the defendant Estate of Hans M. Menzi through its Executor, Manuel G. Montecillo, to surrender for cancellation the original eight Bulletin certificates of stock in its possession, which were presented

Supreme Court E-Library

in court as Exhibits … which are part of the 212,424.5 Bulletin shares subject of the Resolution of the Supreme Court dated April 15, 1988 in G.R. No. 79126.

3. Declaring that the following Bulletin shares are *not* the ill-gotten wealth of the defendant Marcos spouses:

a. The 154,472 Bulletin shares sold by the late Hans M. Menzi to U.S. Automotive Co., Inc., the sale thereof being valid and legal;

b. The 2,617 Bulletin shares in the name of defendant Emilio T. Yap which he owns in his own right; and

c. The 1 Bulletin share in the name of the Estate of Hans M. Menzi which it owns in its own right.

4. Dismissing, for lack of sufficient evidence, plaintiff's claim for damages, and defendants' respective counterclaims.

SO ORDERED.[6]

In the present consolidated petitions, the foregoing Sandiganbayan *Decision* is assailed on different grounds.

The Republic, in *G.R. No. 152758*, assails the afore-quoted *Decision* insofar as it declared as not ill-gotten wealth of the Marcos spouses the 154,472 shares (154 block) sold by Menzi to U.S. Automotive Co., Inc. (US Automotive) and dismissed the Republic's claim for damages.

In *G.R. No. 154487*, Cojuangco questions paragraphs 1 and 2 of the Sandiganbayan *Decision*.

In *G.R. No. 154518*, on the other hand, the Estate of Menzi imputes grave error and misinterpretation of facts and evidence against the Sandiganbayan in declaring that the 46,626 Bulletin shares in the name of Cojuangco, and the 198,052.5 shares (198 block) in the names of Jose Campos (Campos), Cojuangco and Zalamea are ill-gotten wealth of the Marcoses.

The three blocks of Bulletin shares of stock subject of these consolidated petitions are:

---

[6] *Id.* at 47-49.

Supreme Court E-Library

1. 154,472 shares (154 block) sold by the late Menzi and/or Atty. Montecillo to US Automotive on May 15, 1985 for ₱24,969,200.09;

2. 198,052.50 (198 block) issued and registered in the names of Campos, Cojuangco, and Zalamea which were transferred to HMHMI and subsequently sold by HMHMI (through Atty. Montecillo) to Bulletin on February 21, 1986 for ₱23,675,195.85; and

3. 214,424.5 shares (214 block) issued and registered in the names of Campos, Cojuangco, and Zalamea which were the subject of the unanimous Resolution of this Court, through Mr. Chief Justice Claudio Teehankee, in *Bulletin v. PCGG*[7] (Teehankee Resolution) dated April 15, 1988 and the Sandiganbayan Resolutions dated January 2, 1995 and April 25, 1996 in Civil Case No. 0022.

For clarity of presentation, the 154 block, which is the subject of the Republic's petition in G.R. No. 152578, is treated separately from the 198 and 214 blocks, which are the subjects of the petitions in G.R. No. 154487 and G.R. No. 154518.

154 Block

In 1957, Menzi purchased the entire interest in Bulletin from its founder and owner, Mr. Carson Taylor. In 1961, Yap, owner of US Automotive, purchased Bulletin shares from Menzi and became one of the corporation's major stockholders.

On April 2, 1968, a stock option was executed by and between Menzi and Menzi and Co. on the one hand, and Yap and US Automotive on the other, whereby the parties gave the each other preferential right to buy the other's Bulletin shares.

On April 22, 1968, the stockholders of Bulletin approved certain amendments to Bulletin's Articles of Incorporation, consisting of some restrictions on the transfer of Bulletin shares

[7] *Supra,* note 1.

Supreme Court E-Library

to non-stockholders.[8] The amendments were approved by the Board of Directors of Bulletin and by the Securities and Exchange Commission (SEC).

Several years later, on June 5, 1984, Atty. Amorsolo V. Mendoza (Atty. Mendoza), Vice President of US Automotive, executed a promissory note with his personal guarantee in favor of Menzi, promising to pay the latter the sum of ₱21,304,921.16

---

[8] The Amended Articles of Incorporation provides:

"That the subscription and ownership of any and all shares of stock in the corporation are made and taken subject to the condition that any stockholder desiring to sell, transfer, convey or otherwise dispose of his/her shares of stock shall first offer the same to the corporation who shall have priority in acquiring the same. The stockholder concerned shall notify the President and all the other stockholders of the corporation of his/her intention to sell or dispose of his/her stockholdings in writing, and duly receipted for by the President of the corporation at its principal office in the City of Manila and by all the other stockholders. The corporation shall have thirty (30) days from date of receipt of written offer by the President within which to exercise the option. The selling price of the shares shall not be more than the book value thereof based on the balance sheet at the end of the preceding year of the corporation which has been approved by the Board of Directors. Should the corporation fail to exercise the option herein granted, the stockholders concerned shall be free to sell, transfer, convey or otherwise dispose of his/her stockholdings to any person, who must, however, be a Filipino citizen or to a firm or corporation the capital stock of which is 100% Filipino owned or controlled.

… … …

The foregoing restrictions and limitations shall not apply to the sale, transfer, conveyance or disposition by any stockholder of his/her shares of stock in favor of another stockholder of the corporation or to the disposition by any stockholder of the corporation of his/her shares of stock by will, donation, inheritance, assignment or transfer in favor of his/her legal heirs or direct descendants.

Any transfer of conveyance in violation of the foregoing, terms and conditions shall be null and void and shall not be transferable in the books of the corporation.

The entire provisions of this amendment shall be printed on the stock certificates of the corporation and shall be binding on all stockholders, their successors, assigns, administrators and representatives." Quoted from the Sandiganbayan *Decision, Supra,* note 2 at 13-14.

Supreme Court E-Library

with interest at 18% per annum as consideration for Menzi's sale of his 154 block on or before December 31, 1984.

One day after Menzi's death on June 27, 1984, a petition for the probate of his last will and testament was filed in the Regional Trial Court (RTC) of Manila, Branch 29, by the named executor, Atty. Montecillo, and docketed as Special Proceeding No. 84-25244.

On January 10, 1985, Atty. Montecillo filed a motion praying for the confirmation of the sale to US Automotive of Menzi's 154 block. The probate court confirmed the sale in its Order dated February 1, 1985.

Accordingly, on May 15, 1985, Atty. Montecillo received from US Automotive two (2) checks in the amounts of ₱21,304,778.24 and ₱3,664,421.85 in full payment of the agreed purchase price and interest for the sale of the 154 block. On the same day, Atty. Montecillo signed a company voucher acknowledging receipt of the payment for the shares, indicating on the dorsal portion thereof the certificate numbers of the 12 stock certificates covering the 154 block, the number of shares covered by each certificate and the date of issuance thereof.

Atty. Montecillo also wrote on the lower portion of the promissory note executed by Atty. Mendoza the words "Paid May 15, 1985 (signed) M.G. Montecillo, Executor of the Estate of Hans M. Menzi."

Upon these facts, the Sandiganbayan ruled that the sale of the 154 block to US Automotive is valid and legal. According to the Sandiganbayan, the sale was made pursuant to the stock option executed in 1968 between the parties to the sale. Negotiations took place and were concluded before Menzi's death, and full payment was made only after the probate court had judicially confirmed the sale.

The Sandiganbayan dismissed the Republic's claim, based on the affidavit of Mariano B. Quimson, Jr. (Quimson) dated October 9, 1986, that the sale should be nullified because US Automotive only acted as a dummy of Marcos who was the

Supreme Court E-Library

real buyer of the shares. According to the court, the Republic failed to overcome its burden of proof since Quimson's affidavit was not corroborated by other evidence and was, in fact, refuted by Atty. Montecillo.

In its *Memorandum*[9] dated July 7, 2003 in *G.R. No. 152578*, the Republic argues that the Sandiganbayan failed to take into account the fact that despite Menzi's claim that he acquired Bulletin in 1957, he did not include any Bulletin shares in his Last Will and Testament executed in 1977. Atty. Montecillo, the executor of Menzi's estate, likewise did not include any Bulletin share in the initial inventory of Menzi's properties filed on May 15, 1985. Neither were any Bulletin shares declared by Atty. Montecillo even after the probate court issued an Order dated November 17, 1992 for the submission of an updated inventory of Menzi's assets.

The Republic claims that despite these circumstances, coupled with Quimson's affidavit detailing how Marcos used his dummies to conceal his control over Bulletin, as well as the letters and correspondence between Marcos and Menzi indicating that Menzi consistently updated Marcos on the affairs of Bulletin, the Sandiganbayan ruled that the 154 block was not ill-gotten wealth of the Marcoses. The Sandiganbayan's erroneous inference allegedly warrants a review of its findings.

Moreover, the Republic disputes the Sandiganbayan's ruling that it heavily leaned on the affidavit of Quimson without presenting any other corroborating evidence.[10] It argues that in

---

[9] G.R. No. 152578, Vol. II *Rollo*, pp. 1503-1582.

[10] As stated in the assailed *Decision,* Quimson, former President of Bulletin, testified regarding what he knew about the nominees of Marcos in Bulletin, as follows:

There were three (3) NOMINEES OF THE President and corresponding shares were issued to them after the accompanying infusion of funds, which Menzi got from Marcos. The three (3) nominees were:

Jose Y. Campos
Cesar C. Zalamea
Ramon Cojuangco

Shares of stock representing around 54% of the equity were issued in the name of the above nominees and surrendered to Menzi in 1973. After

Supreme Court E-Library

the proceedings before the PCGG, Quimson was subjected to cross-examination by the lawyers of Bulletin which is controlled by Yap. Further, the evidence it presented before the PCGG purportedly showing that the transfer of Bulletin shares from Menzi to US Automotive was undertaken due to pressure exerted by Marcos on Menzi should have been taken into account.

The Republic insists that the sale between Menzi and U.S. Automotive was a sham because the parties failed to comply with the basic requirement of a deed of sale in the transfer of the subject shares. Further, a number of questions were allegedly not resolved, such as: (a) Who was the seller of the subject shares—the late Menzi as the alleged owner or Atty. Montecillo as then special administrator and later executor of Menzi's estate; (b) If Menzi sold the shares, was there a need to confirm the sale? If Atty. Montecillo was the one who sold them, what was his authority to sell the said shares?

---

a short period, Menzi called me and instructed me to change nominee Ramon Cojuangco, in favor of Eduardo Cojuangco, saying that this was upon instruction "*of the President.*" Ramon Cojuangco's shares were cancelled and new shares were issued to Eduardo Cojuangco. None of these nominees showed up in any stockholders' meetings. Nor did they send representative to attend or observe the meetings.

Sometime in 1983, Menzi requested me to prepare a listing of all stock certificates in the name of the nominees, saying that a holding company (which I later on learned as the H M Holdings and Management, Inc.) was being organized by Atty. Manuel Montecillo and Mr. Rolando Gapud to which company all the Bulletin shares in the name of the nominees and shares held by Hans M. Menzi for the President in Liwayway Publishing, Inc. (about 92% of the total shares) Menzi & Co., Inc., Menzi Agricultural, Inc., Menzi Development Corporation, and M & M Consolidated, Inc. will be transferred. I recall Gen. Menzi as saying "He (President Marcos) knows I (Menzi) am sickly; and the children now want a piece of the action."

About 3 months before his death, Menzi instructed me to follow and implement what he (Menzi) had been told by President Marcos to do, namely, to report monthly results of the operations of both Bulletin Publishing Corporation and Liwayway Publishing, Inc. to Mr. Rolando Gapud of Security Bank and to deliver all the dividends checks (1983) for the three Bulletin nominees (Zalamea, Cojuangco and Campos) to Mr. Gapud. This was faithfully complied with and I saw Mr. Gapud monthly until I retired in May, 1985.

Supra, note 2 at 24-25, 27-28.

Supreme Court E-Library

The Republic also contends that Menzi and Yap were both dummies of the late President Marcos, used by the latter in order to conceal his interest in Bulletin. Hence, the 154 block should also have been declared ill-gotten wealth and forfeited in favor of the Government.

The foregoing allegedly warrants the award of damages in favor of the Republic which the Sandiganbayan erroneously failed to do.

The Republic, therefore, prays that the Sandiganbayan *Decision,* insofar as it declares the sale of the 154 block to be valid and legal, be reconsidered and judgment accordingly rendered declaring the 154 block as ill-gotten wealth, forfeiting the same or the proceeds thereof in favor of the Republic, and awarding actual, temperate and nominal damages in the Court's discretion, moral damages in the amount of 50 Billion Pesos, exemplary damages of 1 Billion Pesos, attorney's fees, litigation expenses and treble judicial costs.

The Estate of Menzi and HMHMI filed a *Memorandum*[11] dated March 10, 2005, averring that the Republic failed to adduce evidence of any kind that the 154 block was ill-gotten wealth of the Marcoses. They claim that the requirements for a valid transfer of stocks, namely: (1) there must be delivery of the stock certificate; (2) the certificate must be indorsed by the owner or his attorney-in-fact or other persons legally authorized to make the transfer; and (3) the transfer must be recorded in the books of the corporation in order to be valid against third parties, have all been met.

The parties to the sale allegedly confirm the indorsement and delivery of the Bulletin shares of stock representing the 154 block. The requirement that the transfer be recorded in the books of the corporation was also met because US Automotive exercised its rights as shareholder.

It is also allegedly immaterial whether it was Menzi or Atty. Montecillo who indorsed the stock certificates. If it was Menzi,

---

[11] *Supra,* note 9 at 1649-1771.

Supreme Court E-Library

then his indorsement was an act of ownership; if it was Montecillo, then the indorsement was pursuant to the duly executed General Power of Attorney filed with the SEC and, subsequently, on the basis of his authority as Special Administrator and Executor of Menzi's estate.

In his *Memorandum*[12] dated May 10, 2005, Yap also maintains that the sale of the 154 block was valid and legal. The non-inclusion of the said block of shares in the inventory of Menzi's estate was purportedly due to the fact that the same had, by then, been sold to US Automotive. Yap also claims that Atty. Montecillo was duly authorized to effect the sale by virtue of the General Power of Authority and the Last Will and Testament executed by Menzi.

The absence of a deed of sale evidencing the sale is allegedly not irregular because the law itself does not require any deed for the validity of the transfer of shares of stock, it being sufficient that such transfer be effected by delivery of the stock certificates duly indorsed. At any rate, a duly notarized Receipt covering the sale was executed.[13]

Moreover, the BIR certified that the Estate of Menzi paid the final tax on capital gains derived from the sale of the 154 block and authorized the Corporate Secretary to register the transfer of the said shares in the name of US Automotive. Further, a stock certificate covering the 154 block was issued to US Automotive by Quimson himself as Corporate Secretary.

Sec. 63 of the Corporation Code provides the requisites for a valid transfer of shares:

> Sec. 63. *Certificate of stock and transfer of shares.*—The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. *Shares of stock so issued are personal property and may be transferred by*

---

[12] *Id.* at 1882-1957.

[13] *Supra,* note 2, at 16; Exhs. 4 and 4-A-Yap; Exh. AA.

Supreme Court E-Library

delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.

No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation. [Italics supplied]

The Corporation Code acknowledges that the delivery of a duly indorsed stock certificate is sufficient to transfer ownership of shares of stock in stock corporations. Such mode of transfer is valid between the parties. In order to bind third persons, however, the transfer must be recorded in the books of the corporation.

Clearly then, the absence of a deed of assignment is not a fatal flaw which renders the transfer invalid as the Republic posits. In fact, as has been held in *Rural Bank of Lipa City, Inc. v. Court of Appeals*[14] the execution of a deed of sale does not necessarily make the transfer effective.

In that case, petitioners argued that by virtue of the deed of assignment, private respondents had relinquished to them all their rights as stockholders of the bank. This Court, however, ruled that the delivery of the stock certificate duly indorsed by the owner is the operative act that transfers the shares. The absence of delivery is a fatal defect which is not cured by mere execution of a deed of assignment. Consequently, petitioners, as mere assignees, cannot enjoy the status of a stockholder, cannot vote nor be voted for, and will not be entitled to dividends, insofar as the assigned shares are concerned.

There appears to be no dispute in this case that the stock certificates covering the 154 block were duly indorsed and delivered to the buyer, US Automotive. The parties to the sale, in fact, do not question the validity and legality of the transfer.

---

[14] G.R. No. 124535, September 28, 2001, 366 SCRA 188.

Supreme Court E-Library

The objection raised by the Republic actually concerns the authority of Atty. Montecillo, the executor of Menzi's estate, to indorse the said certificates. However, Atty. Montecillo's authority to negotiate the transfer and execute the necessary documents for the sale of the 154 block is found in the General Power of Attorney executed by Menzi on May 23, 1984, which specifically authorizes Atty. Montecillo "[T]o sell, assign, transfer, convey and set over upon such consideration and under such terms and conditions as he may deem proper, any and all stocks or shares of stock, now standing or which may thereafter stand in my name on the books of any and all company or corporation, and for that purpose to make, sign and execute all necessary instruments, contracts, documents or acts of assignment or transfer."[15]

Atty. Montecillo's authority to accept payment of the purchase price for the 154 block sold to US Automotive after Menzi's death springs from the latter's Last Will and Testament and the Order of the probate court confirming the sale and authorizing Atty. Montecillo to accept payment therefor. Hence, before and after Menzi's death, Atty. Montecillo was vested with ample authority to effect the sale of the 154 block to US Automotive.

That the 154 block was not included in the inventory is plausibly explained by the fact that at the time the inventory of the assets of Menzi's estate was taken, the sale of the 154 block had already been consummated. Besides, the non-inclusion of the proceeds of the sale in the inventory does not affect the validity and legality of the sale itself.

At any rate, the Sandiganbayan's factual findings that the 154 block was sold to US Automotive while Menzi was still alive, and that Atty. Montecillo merely accepted payment by virtue of the authority conferred upon him by Menzi

---

[15] The General Power of Attorney is attached as Annex 3 of Yap's Memorandum and marked as Yap's Exhibit 10; *Supra,* note 9 at 1973-1976.

Supreme Court E-Library

himself are conclusive upon this Court, supported, as they are, by the evidence on record.[16] As held by the Sandiganbayan:

> … The sale was made pursuant to the Stock Option executed in 1968 between the parties to the sale, considering the restrictions contained in Bulletin's Articles of Incorporation as amended in 1968 limiting the transferability of its shares. Negotiations for the sale took place and were concluded before the death of Menzi. After his death, full payment of the entire consideration of the sale, principal and interest, was made only after judicial confirmation thereof in the Probate Case. The transaction was duly supported by the corresponding receipt, voucher, cancelled checks, cancelled promissory note, and BIR certification of payment of the corresponding taxes due thereon.[17]

The Supreme Court is not a trier of facts. It is not our function to examine and weigh all over again the evidence presented by the parties in the proceedings before the Sandiganbayan.[18]

It is also significant that even Quimson's affidavit does not state, in a categorical manner, that Yap was a Marcos dummy used by the latter to conceal his Bulletin shareholdings. In contrast, Quimson unqualifiedly declared that Campos, Cojuangco and Zalamea were the former dictator's nominees to Bulletin.[19]

---

[16] *Republic v. Sandiganbayan*, G.R. No. 128606, December 4, 2000, 346 SCRA 760.

[17] *Supra* note 2 at 19.

[18] *Republic v. Sandiganbayan*, G.R. No. 135789, January 31, 2002, 375 SCRA 425. In that case, the Sandiganbayan held that "[B]ased on the evidence the PCGG submitted so far to the Sandiganbayan, the late Hans M. Menzi owned the Bulletin Publishing Corporation almost one hundred (100%) percent since 1957, except those Bulletin shares sold to U.S. Automotive Corporation in 1985, those converted to treasury shares in 1986, and those sold to the general public at public offerings…" (Per Pardo, *J.* Chief Justice Davide and Associate Justices Puno, Kapunan and Ynares-Santiago, concurring)

[19] Affidavit of Quimson attached as Annex "S" to Cojuangco's petition in G.R. No. 154487. G.R. No. 154487 *Rollo*, pp. 522-526.

Supreme Court E-Library

We, therefore, agree with the Sandiganbayan that the sale of the 154 block to US Automotive was valid and legal.

198 and 214 blocks

HMHMI was incorporated on May 20, 1982 by Menzi, Campos, Cojuangco, Rolando C. Gapud (Gapud) and Zalamea, with an authorized capital stock of ₱1,000,000.00 divided into 100,000 shares with par value of ₱10.00 each.

A Deed of Transfer and Conveyance was executed by Menzi, Campos, Cojuangco and Zalamea on August 17, 1983, transferring the shares of stock registered in their names in various corporations to HMHMI in exchange for 6,000,000 shares of the latter's capital stock, subject to the approval by the SEC of HMHMI's Certificate of Increase of Capital Stock. The shares of stock transferred included the 198 block of Bulletin shares, 90,866.5 of which were registered in the name of Campos; 90,877 in the name of Cojuangco; and 16,309 in the name of Zalamea.

On February 14, 1984, HMHMI amended its Articles of Incorporation by increasing its authorized capital stock to ₱100,000,000.00 divided into 10,000,000 shares with par value of ₱10.00 per share.

On January 15, 1986, the law firm of Siguion Reyna, Montecillo & Ongsiako wrote a letter to Bulletin's corporate secretary, Atty. Mendoza, requesting that three (3) certificates of stock representing 90,866.5, 90,877, and 16,309 Bulletin shares be issued in favor of HMHMI in exchange for 21 certificates of stock in HMHMI.

Atty. Mendoza acknowledged receipt of the 21 certificates of stock but replied that the transfer by Campos, Cojuangco and Zalamea of their Bulletin shares to HMHMI cannot be recorded in the books of Bulletin because it was made in violation of Bulletin's Articles of Incorporation which provides restrictions and limitations on the transferability of the shares of the company by its stockholders. Bulletin, however, offered to buy the shares at the price fixed in the Articles of Incorporation. The offer appears to have been accepted by HMHMI through its President, Atty. Montecillo.

Supreme Court E-Library

Thus, on January 30, 1986, HMHMI's Board of Directors passed a resolution approving the sale to Bulletin of the 198 block and authorizing its President or Corporate Secretary to sign and execute the corresponding deed of sale. Accordingly, a Deed of Sale was executed on February 21, 1986 by Atty. Montecillo whereby HMHMI sold the 198 block to Bulletin for the amount of ₱23,675,195.85.

On April 22, 1986, the shares of Marcos, Yap, Cojuangco and their nominees or agents in the Bulletin were sequestered by virtue of a Sequestration Order issued by the PCGG.

The SEC issued a certification to the effect that as of February 21, 1986, the total subscribed shares of Bulletin was 756,861. Of these, 198,052.5 were treasury shares, leaving the total outstanding shares at 567,808.5. The stockholders of Bulletin and the shares of stock held by each of them were listed as follows:

Name	*No. of Shares*
Emilio T. Yap	2,617
Menzi Trust Fund	28,977
Estate of Hans M. Menzi	1
U.S. Automotive Co. Inc.	318,084
xxx	xxx
Cesar Zalamea	121,178
Jose Campos	46,620.5
Eduardo Cojuangco	46,626
xxx	xxx
Total	567,808.5

On February 12, 1987, another Writ of Sequestration was issued by the PCGG, sequestering all the shares of stock, as well as the assets, properties, records and documents of HMHMI. Because of this Sequestration Order, the proceeds from the sale of the 198 block which were deposited with Philtrust Bank were frozen.[20]

[20] On April 13, 1998, however, the Sandiganbayan lifted the Writ of Sequestration dated February 12, 1987, reasoning that there was no *prima facie* factual basis for its issuance. This Resolution was affirmed by the *Supreme Court in Republic v. Sandiganbayan,* G.R. No. 135789, January 31, 2002, 375 SCRA 425.

Supreme Court E-Library

On March 16, 1987, the sequestration of the 2,617 Bulletin shares of Yap was lifted upon the latter's motion.

On April 14, 1987, the PCGG wrote a letter/order to the Corporate Secretary of Bulletin, asking for the schedule of the annual stockholders' meeting of the corporation because the sequestered shares consisting of the 214 block will be voted by the Commission. This letter became the subject of a petition[21] filed by Bulletin with this Court questioning the validity of the PCGG's letter/order and seeking to compel PCGG to accept Bulletin's offer of a cash deposit in the amount of ₱34,592,903.34 representing the value of the 214 block of sequestered Bulletin shares. The Court issued a temporary restraining order.

On July 31, 1987, the PCGG received from Bulletin the amount of ₱8,173,506.06 as full payment of 46,620.5 Bulletin shares registered in the name of Campos. The receipt stated that "Mr. Jose Y. Campos has waived the ownership of said shares in favor of the Republic of the Philippines through the Presidential Commission on Good Government."

A Deed of Assignment was likewise executed by Zalamea on October 15, 1987, assigning and waiving in favor of the Republic his rights to 121,178 Bulletin shares registered in his name. On the same day, Bulletin issued in favor of PCGG a check in the amount of ₱21,244,926.96 as full payment of Zalamea's shares.

This Court, on April 15, 1988, issued the Teehankee Resolution, the dispositive portion of which pertinently states:

> 2. Directing the Commission to accept the cash deposit of ₱8,174,470.32 offered by petitioner for the 46,626 sequestered shares in the name of Mr. Eduardo M. Cojuangco, Jr. expressly subject to the alternative conditions (A and B) hereinabove set forth, and likewise directing the Commission to accept the cash deposit, if it has not actually sold the Cesar C. Zalamea Bulletin shares to petitioner (*supra*, p. 13, par [2]) of ₱21,244,926.96 for the sequestered shares of Bulletin in the name of Mr. Cesar Zalamea under the same alternatives already mentioned; and

[21] *Supra* note 5.

Supreme Court E-Library

3. Remanding the case regarding the issue of ownership of the said sequestered Bulletin shares for determination and adjudication to the Sandiganbayan.[22]

An agreement was thereafter executed between PCGG and Bulletin on June 9, 1988 regarding the 46,626 Bulletin shares of Cojuangco whereby PCGG accepted Bulletin's deposit in the amount of ₱8,174,470.32, subject to the alternatives set forth in the Teehankee Resolution, as follows:

Alternative "A"—To standby as full payment plus whatever interest earnings thereon upon final judgment of the Court declaring the Republic of the Philippines as owners of the 46,626 shares, accompanied by the corresponding original stock certificates, issued in the name of the government, duly endorsed in favor of the Bulletin Publishing Corporation, free from liens and encumbrances; or

Alternative "B"—To immediately return to Bulletin Publishing Corporation the cash deposit in the amount of ₱8,174,470.32 plus whatever interest earnings thereon upon final judgment by the Court declaring that Mr. Eduardo Cojuangco, Jr. is the true owner of the 46,626 shares.[23]

With this factual backdrop, the Sandiganbayan ruled that Campos, Cojuangco and Zalamea were nominees and dummies of Marcos. Hence, the 198 block which these nominees transferred to HMHMI and which, in turn, were sold to Bulletin are ill-gotten wealth.

The Sandiganbayan anchored its finding on the Deposition of Campos taken on November 25, 1994 before the Philippine Consulate General in Vancouver, British Columbia, Canada, that he held shares in Bulletin and HMHMI "per instruction of President Marcos"; that the beneficial owner of these shares "must be President Marcos"; and that he received three (3) dividend checks from Bulletin "for the benefit of President Marcos."

---

[22] *Id.* at 728.

[23] *Id.* at 727.

Supreme Court E-Library

Based on the Deed of Assignment executed by Zalamea on October 15, 1987, wherein he manifested that he "does not claim true and beneficial ownership" of the 121,178 Bulletin shares registered in his name and that he voluntarily waived and assigned these shares in favor of PCGG, the Sandiganbayan concluded that Zalamea could not have been a nominee of Menzi, as the latter's estate claims, but of Marcos.

The Sandiganbayan likewise rejected Cojuangco's contention that the Bulletin and HMHMI shares registered in his name "were not acquired and held by him as dummy, nominee and/or agent of defendants Ferdinand E. Marcos and Imelda Romualdez Marcos, but upon the request, and as nominee, of the late Hans Menzi who owned and delivered to him said shares." According to the Sandiganbayan, Cojuangco failed to present evidence necessary to establish his affirmative defense.

As regards the 214 block, the Sandiganbayan ruled that there is no longer any dispute concerning the ownership of the 46,620.5 shares held by Campos and the 121,178 shares held by Zalamea in view of the Teehankee Resolution and the fact that these shares have been waived and assigned to PCGG.

The Sandiganbayan went on to declare that the only remaining issue pertaining to Cojuangco's claim to his alleged portion of the 214 block should be resolved in favor of the Republic because of Cojuangco's consistent disavowal of any "proprietary interest in the shares which are the subject matter of the instant case" and his claim that he held the shares as nominee of Menzi.

The Sandiganbayan further ruled that Yap's shares, which were acquired by him in 1961 before Marcos became President, are not ill-gotten wealth of the Marcoses. Moreover, the one (1) Bulletin share for which dividend checks were issued to and received by the Estate of Menzi was deemed to belong to the latter.

In *G.R. No. 154487*, petitioner Cojuangco assails paragraphs 1 and 2 of the Sandiganbayan *Decision*. Allegedly, the Government does not claim that in acquiring the Bulletin shares registered in Cojuangco's name, the late President Marcos used government

Supreme Court E-Library

funds or resources. Cojuangco raises several issues, namely: (a) Were the Bulletin shares, at any time, of government ownership? (b) Were the Bulletin shares acquired by Marcos and, if so, did he use government funds to acquire them? (c) Did petitioner Cojuangco act as the "dummy" or "nominee" of Marcos to acquire, or to conceal the acquisition of the shares by the latter?

In the *Memorandum for Eduardo M. Cojuangco, Jr.*[24] dated May 6, 2005, Cojuangco argues that the Republic neither alleged nor presented evidence to prove that that the Bulletin shares registered in his name were owned by the Republic but were taken by the Marcoses "by taking advantage of their public office and/or using their powers, authority, influence, connections or relationship" or that they were acquired by the Marcoses from Menzi with the use of government or public funds. Hence, the conclusion should be sustained that the shares were owned by Menzi and never by the Republic, and no public funds were used in their acquisition.

Cojuangco attacks the Sandiganbayan's reliance on Quimson's affidavit saying that it is hearsay because Quimson was not presented in court to affirm the contents of his affidavit and was not subjected to cross-examination as he had already passed away when Civil Case No. 0022 was tried. Quimson's affidavit is allegedly double hearsay insofar as it alleges that Marcos owned the Bulletin shares and that Cojuangco was merely Marcos' nominee because Quimson had no contact with Marcos and his knowledge of the latter's purported ownership of the Bulletin shares was merely relayed to him by Menzi.

Even the supposed corroborating evidence, consisting of the affidavits of Pedro Teodoro, Evelyn S. Singson, Gapud, and Angelita Reyes, have allegedly been declared as having no probative value inasmuch as the affiants did not take the witness stand and could not be cross-examined.

The Republic likewise allegedly failed to prove its contention that Bulletin issued checks in favor of Campos, Cojuangco and

[24] G.R. No. 154487 *Rollo*, pp. 1280-1366.

Supreme Court E-Library

Zalamea which were deposited into numbered accounts in Security Bank & Trust Company owned by the Marcoses. Moreover, the dividend checks supposedly indorsed by Cojuangco in blank do not conclusively demonstrate that they were indorsed in favor of the Marcoses.

On the other hand, there is allegedly sufficient evidence on record to prove that Cojuangco was a nominee of Menzi. These documents consist of the testimony of Atty. Montecillo to the effect that, as far as he knew, Cojuangco "really acted as nominee for the General," and the originals of the stock certificates covering the Bulletin shares registered in Cojuangco's name.

Cojuangco further avers that the allegation that the Bulletin shares were registered in his name upon the request, and as nominee, of Menzi is a specific denial and not an affirmative defense as the Sandiganbayan declared. As a specific denial, the allegation need not be proven unless the Republic presents adequate evidence proving the allegations in its complaint which, Cojuangco insists, the Republic failed to do.

He likewise argues that the Republic is not entitled to damages of any kind because it failed to establish that it has any proprietary interest in the Bulletin shares registered in his name; that the said shares are owned by the Marcoses; and that it suffered any pecuniary loss by reason of such ownership.

Based on these allegations, Cojuangco prays that he be declared the owner of the 46,626 Bulletin shares registered in his name, together with all cash and stock dividends which have accrued in favor of said shares from October 15, 1987, and ordering the PCGG to return the cash deposit of ₱8,174,470.32 plus interest to Bulletin.

In its *Memorandum*[25] dated March 17, 2005, the Republic maintains that Cojuangco has consistently denied any proprietary interest in the Bulletin shares. Hence, he cannot claim ownership of the Bulletin shares registered in his name. His allegation that he was a nominee of Menzi was pleaded by way of defense.

---

[25] *Id.* at 1191-1262.

Supreme Court E-Library

Thus, he has the burden of proving this material allegation, set up as new matter, that the shares were not his but Menzi's.

Since the Bulletin shares were not included in the inventory of Menzi's assets, it allegedly follows that Cojuangco could not have been a nominee of Menzi who did not own the subject Bulletin shares.

As regards the contention that the Republic failed to show that the shares belong to the Government or were acquired using public funds, the Republic maintains that Marcos acquired the Bulletin shares using his political clout. His very act of participating in a business enterprise using nominees to conceal his ownership of Bulletin shares is already a violation of the Constitution.

Furthermore, Campos and Zalamea, who, like Cojuangco, held shares in the 198 and 214 blocks, have already surrendered and assigned their respective shares to the Government and acknowledged the right of the Government over the Bulletin registered in their names. Such is allegedly a clear indication that they acted as dummies of Marcos. The admission of Campos and Zalamea that their shares in the 214 block belonged to Marcos may allegedly be used to prove that the 198 block was likewise held by them as dummies of the former dictator.

The Sandiganbayan also allegedly did not rely on the Teehankee Resolution to support its conclusion that the 198 and 214 blocks are ill-gotten wealth but made its own finding after a full-blown trial at which all the parties, except Cojuangco, presented their respective evidence.

Moreover, the evidence presented by the Republic allegedly preponderates in favor of its theory that the Bulletin shares in the names of Campos, Cojuangco and Zalamea were actually held in trust for the benefit of the Marcoses. Notably, the PCGG Resolution dated May 22, 1987, presented by the Republic as its Exhibit "I" declares that Quimson and Teodoro, close associates of Menzi, stated under oath that when Marcos allowed the Bulletin to reopen during Martial Law, Menzi was allowed

Supreme Court E-Library

only 20% participation, and that Marcos put his shares in the names of Campos, Cojuangco and Zalamea.

Besides, Menzi did not execute any deed of trust in his favor as trustor and Campos, Cojuangco and Zalamea as trustees. Neither did the Estate of Menzi claim that Campos, Cojuangco and Zalamea were nominees of Menzi as no cross-claim was filed by the Estate of Menzi even as it claimed ownership of the 198 and 214 blocks.

In their *Memorandum*[26] dated March 10, 2005 in G.R. Nos. 154487 and 154518, the Estate of Menzi and HMHMI argue that the Sandiganbayan erred in not resolving the issue of the ownership of the 198 and 214 blocks. The Sandiganbayan instead allegedly relied on its misinterpretation of the Teehankee Resolution to the effect that there is no longer any controversy as regards the ownership of the portion of the 214 block held by Zalamea. According to said respondents, the Teehankee Resolution clearly directed the Sandiganbayan to resolve the issue of ownership of both the Zalamea and Cojuangco portions of the 214 block.

Respondents Estate of Menzi and HMHMI also contend that the Quimson affidavit should have been treated as having no probative value with respect to the 154 block and the 198 and 214 blocks alike. The affidavit was allegedly not at all corroborated by the other documents presented by the Republic and cited in the assailed *Decision.*

They insist that Campos, Cojuangco and Zalamea were nominees of Menzi, not dummies of Marcos, because, as allegedly established during trial, the stock certificates covering the contested blocks of shares were indorsed in blank and remained in Menzi's possession. Even Campos allegedly testified that he was never in possession of the stock certificates.

Assuming that Campos was indeed a Marcos dummy, his admission should apply solely to the Bulletin shares registered in his name. Likewise, Zalamea allegedly never declared himself

---

[26] *Id.* at 1068-1188.

Supreme Court E-Library

to be a Marcos nominee, only that he does not claim true and beneficial ownership of the Bulletin shares recorded in his name. The dividend checks for Zalamea's shareholdings, in fact, allegedly indicate the Estate of Menzi as the payee, proving that Zalamea was Menzi's nominee.

Respondents Estate of Menzi and HMHMI further claim that the 198 and 214 blocks were not mentioned in Menzi's Last Will and Testament because Menzi knew of the impending promulgation of a decree which would limit to only 20% the ownership of media enterprises by one person or family. Allegedly, in order to get around this restriction, Menzi devised the nominee structure whereby he used three (3) nominees to enable him to retain his 80% stake in Bulletin. Besides, there was allegedly a legal question as to whether sequestered shares need to be declared for estate tax purposes in the meantime that a case involving these shares was pending.

Said respondents finally posit that assuming that the 198 and 214 blocks are ill-gotten, the shares themselves, and not merely the proceeds, should be forfeited in favor of the Government.

Yap, on the other hand, claims in his *Memorandum*[27] dated May 10, 2005 filed in G.R. Nos. 154487 and 154518 that Cojuangco may not raise in his petition a new specific relief consisting of the prayer that he be declared the owner of the 46,626 Bulletin shares registered in his name which Cojuangco never asked for during the proceedings before the Sandiganbayan. Cojuangco is allegedly bound by his judicial admission that he has no proprietary interest over the said Bulletin shares.

Purportedly, because of this judicial admission, Alternative B mentioned in the Teehankee Resolution was eliminated. The only option which remained was, as held by the Sandiganbayan, to declare that the Government is the legal owner of the shares and direct the PCGG to execute the necessary documents to effect the transfer thereof in accordance with Alternative A.

---

[27] *Id.* at 1368-1443.

Supreme Court E-Library

As regards the prayer that the shares themselves be forfeited in favor of the Government, Yap contends that this cannot be done because the Government is barred by the Constitution from acquiring ownership of private mass media.

The Estate of Menzi and HMHMI should also not be allowed to claim the portion of the 214 block held by Campos and Zalamea whose ownership has allegedly been settled by this Court in the Teehankee Resolution.

Yap also claims that the Estate of Menzi and HMHMI have unlawfully concealed the stock certificates representing a portion of the shares held by Campos and Zalamea. Their lawyers, specifically Atty. Montecillo, have also allegedly staked an unfounded claim on the Bulletin shares in violation of their duty, as lawyers of Bulletin for several years, to protect the latter's interests.

Cojuangco filed a *Reply Memorandum*[28] dated October 17, 2005, substantially reiterating his argument that the Sandiganbayan failed to make a finding that the Bulletin shares are ill-gotten as defined by the pertinent executive orders and that they were owned by the Marcoses. Consequently, he insists that there is no basis for the Sandiganbayan's conclusion that the Republic is the legal owner of the said shares.

The Republic also filed a *Memorandum*[29] dated March 17, 2005 in G.R. No. 154518, averring that the petition raises factual issues not proper in a petition for review under Rule 45 of the Rules of Court.

The Republic insists that the *Decision* of the Sandiganbayan relative to the 198 and 214 blocks was not based on Quimson's affidavit alone but on the totality of the evidence presented to support the complaint. Quimson's affidavit was allegedly given prominence because it related in detail how Campos, Cojuangco and Zalamea came to be nominees of Marcos. The allegations in Quimson's affidavit were allegedly confirmed by Menzi's

---

[28] *Id.* at 1246-1282.

[29] G.R. No. 154518 Vol. II *Rollo*, pp. 1590-1711.

Supreme Court E-Library

Last Will and Testament, the initial inventory of his assets, the letters and correspondence between Marcos and Menzi, Campos' deposition, and the dividend checks issued to Campos, Cojuangco and Zalamea even after they have supposedly transferred their Bulletin shares to HMHMI.

Moreover, Atty. Montecillo did not institute any action against Campos, Cojuangco and Zalamea to recover the shares. This allegedly indicates that the shares were not owned by Menzi and that Campos, Cojuangco and Zalamea did not act as Menzi's nominees.

As regards the claim that Menzi owned the shares registered in the names of Campos, Cojuangco and Zalamea because the stock certificates covering them were in Menzi's possession, the Republic maintains that mere possession of the stock certificates does not operate to vest ownership on Menzi considering that Campos already declared that Marcos owned those shares and Zalamea surrendered his shares to the Government.

Furthermore, the Republic alleges that the Sandiganbayan had already ruled with finality that the Estate of Menzi and HMHMI cannot recover the Campos and Zalamea portions of the 214 block. Specifically, in the Resolution dated January 2, 1995, the Sandiganbayan declared that the Estate of Menzi cannot recover the Campos shares because the latter, who was not a co-defendant in the case, had already voluntarily surrendered the same to the PCGG. Zalamea's shares could likewise not be recovered because he was also not a party, either as defendant, cross-defendant or third-party defendant. Moreover, in another Resolution dated July 10, 1993, the Sandiganbayan held that the Estate of Menzi has not pleaded any claim of ownership over the Bulletin shares in the names of Campos, Cojuangco and Zalamea, much less has it intervened to express any prejudice to it should any judgment be rendered for or against Campos, Cojuangco and Zalamea.

We again affirm the ruling of the Sandiganbayan.

Supreme Court E-Library

It should be noted at the outset that there is no more dispute as regards the Bulletin shares registered in the name of Campos. In fact, Campos was not included as a defendant in Civil Case No. 0022. The Bulletin shares registered in his name have been voluntarily surrendered to the PCGG and the proceeds thereof have accordingly been forfeited in favor of the Government.

The Pre-Trial Order of the Sandiganbayan dated November 11, 1991 likewise does not mention as an issue the ownership of the Campos-held Bulletin shares.

The same cannot be said, however, of the Bulletin shares registered in the name of Zalamea. Although he was dropped as a party-defendant in the Second Amended Complaint dated October 17, 1990 purportedly by reason of the Deed of Assignment he executed on October 15, 1987, the Zalamea-held shares are clearly still covered by the Teehankee Resolution remanding the issue on the ownership of the sequestered Cojuangco and Zalamea shares for determination and adjudication by the Sandiganbayan.

Having said that, we now proceed to determine whether the Sandiganbayan committed reversible error in rendering the assailed *Decision*.

As with the 154 block, the issues raised by the petitioners assailing the Sandiganbayan's disposition of the 198 and 214 blocks are largely factual and, therefore, generally beyond the scope of our review under Rule 45 of the Rules of Court. Nonetheless, as will be shown in the following disquisition, there is no cause for this Court to reverse the Sandiganbayan because the evidence on record amply supports its findings and conclusions.

The 46,626 shares registered in the name of Cojuangco which formed part of the 214 block were declared to be ill-gotten wealth based on the evidence presented by the Republic to show that Cojuangco acted as a nominee of Marcos and on Cojuangco's unsubstantiated allegation that he acted as a nominee not of Marcos but of Menzi.

Supreme Court E-Library

Cojuangco counters, however, that the allegation that he acted as Menzi's nominee is a specific denial which he does not have the burden of proving.

Notably, in the *Answer of Defendant Eduardo M. Cojuangco, Jr.* dated March 16, 1989, Cojuangco claimed as part of his denial that "whatever shares of stock he may have in Bulletin Publishing Corporation and/or H.M. Holdings and Management, Inc. were not acquired and held by him as dummy, nominee and/or agent of defendants Ferdinand E. Marcos and Imelda Romualdez Marcos, but upon the request, and as nominee, of the late Hans Menzi who owned and delivered to him said shares."[30]

Likewise, in his *Pre-Trial Brief* dated January 15, 1992, Cojuangco stated that "[I]n regard shares of stock in the name of defendant Cojuangco in Bulletin Publishing Corporation and/or HM Holdings & Management, Inc., he was never, and is not, a nominee of any other person but the late Brig. Gen. Hans M. Menzi. Defendant Cojuangco therefore reiterates that he has no proprietary interest in the shares which are the subject matter of the instant case. They properly belong to the estate of the late Hans Menzi."[31]

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.[32]

---

[30] G.R. No. 154487, *Rollo*, p. 267.

[31] G.R. No. 152578, Vol. I *Rollo*, p. 429.

[32] *Metro Manila Transit Corp. v. Court of Appeals*, G.R. No. 104408, June 21, 1993, 223 SCRA 521.

Supreme Court E-Library

The party who alleges a fact has the burden of proving it. The burden of proof[33] 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.[34]

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."[35]

In contrast to Cojuangco's consistent, albeit unsupported, disclaimer, the Sandiganbayan found the Republic's evidence to be preponderant. These pieces of evidence consist of: the affidavit of Quimson detailing how Campos, Cojuangco and Zalamea became Marcos' nominees in Bulletin; the affidavit Teodoro relative to the circumstances surrounding the sale of Menzi's substantial shares in Bulletin to Marcos' nominees and Menzi's retention of only 20% of the corporation; the sworn statement of Gapud describing the business interests and associates of Marcos and stating that Bulletin checks were periodically issued to Campos, Cojuangco and Zalamea but were deposited after indorsement to Security Bank numbered accounts owned by the Marcoses dividend checks issued to Campos, Cojuangco and Zalamea even after their shares have been transferred to HMHMI; the Certificate of Incorporation,

---

[33] Sec. 1. *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. Rule 131, Rules of Court.

[34] *Sambar v. Levi Strauss & Co.,* G.R. No. 132604, March 6, 2002; *Supreme Transliner Inc. v. Court of Appeals*, G.R. No. 125356, November 21, 2001.

[35] G.R. No. 154487, *Rollo*, p. 485.

Supreme Court E-Library

Articles of Incorporation and Amended Articles of Incorporation of HMHMI showing that Bulletin shares held by Campos, Cojuangco and Zalamea were used to set up HMHMI; Deed of Transfer and Conveyance showing that Campos, Cojuangco, Zalamea and Menzi transferred several shares, including Bulletin shares, to HMHMI in exchange for shares of stock in the latter which shares were not issued; the Inventory of Menzi's assets as of May 15, 1985 which does not include Bulletin shares; notes written by Marcos regarding Menzi's resignation as *aide-de-camp* to devote his time to run Bulletin's operations and the reduction of his shares in the corporation to 12%; and letters and correspondence between Marcos and Menzi regarding the affairs of Bulletin.

These pieces of uncontradicted evidence suffice to establish that the 198 and 214 blocks are indeed ill-gotten wealth as defined under the Rules and Regulations of the PCGG, *viz:*

> Sec. 1. *Definition.*— (A) "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;
>
> (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;

Supreme Court E-Library

(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.

Cojuangco's disavowal of any proprietary interest in the Bulletin shares is conclusive upon him. His prayer that he be declared the owner of the said shares, together with all the cash and stock dividends which have accrued thereto since October 15, 1987, and that the PCGG be ordered to return the cash deposit of ₱8,174,470.32 to Bulletin, therefore, has no legal basis and should perforce be denied.

In this connection, it should be said that Cojuangco apparently desisted from presenting evidence and chose instead to stake his claim with the Estate of Menzi and HMHMI. As found by the Sandiganbayan, however, the Estate of Menzi and HMHMI failed to prove their allegation that Campos, Cojuangco and Zalamea were Menzi's nominees. Neither did the Estate of Menzi and HMHMI institute an action to recover the shares from Menzi's nominees.

Significantly, even as they claimed ownership of the Bulletin shares in their Answer to the Republic's Second Amended Complaint, the Estate of Menzi and HMHMI did not file any cross-claim against the purported Menzi nominees.

Quite revealing, too, is the fact that Campos, in his *Answers to Direct Interrogatories*[36] taken before the Consul General at the Philippine Consulate General in Vancouver, British Columbia, Canada on November 25, 1994, repeatedly declared that he owned a portion of the 198 block "per instruction of President Marcos"[37] and that he "became the shareholder, per instruction of President Marcos."[38]

---

[36] G.R. No. 154487, *Rollo*, pp. 626-652.

[37] *Id.* at 628.

[38] *Ibid.*

Supreme Court E-Library

Likewise, in his *Deed of Assignment* dated October 15, 1987, Zalamea manifested that he "does not claim true and beneficial ownership" of the Bulletin shares registered in his name and that he voluntarily waived and assigned the same in favor of the PCGG.

These declarations should have alerted the Estate of Menzi and HMHMI to file cross-claims against Campos and Zalamea. The fact that they did not enfeebles their claim of ownership.

It is also important to note that the Estate of Menzi did not include the 198 and 214 blocks in the inventory of the estate's assets dated May 15, 1985. If, as it claims, the Bulletin shares of Campos, Cojuangco and Zalamea were held by them as nominees of Menzi, then these shares should have been included in the inventory. The justification advanced for the said non-inclusion, which is that the stock certificates covering them were not in the possession of Atty. Montecillo, is nothing but a hollow pretext given the fact that even after the certificates came to Atty. Montecillo's possession in 1987, an updated inventory declaring the said shares as part of Menzi's estate was not filed pursuant to the Order of the probate court dated November 17, 1992.

Further, the claim that Menzi would need dummies because of the impending promulgation of a decree which would limit to 20% the ownership of media enterprises by one person or family is incredulous since no such decree was ever issued.

Parenthetically, the fact that the stock certificates covering the shares registered under the names of Campos, Cojuangco and Zalamea were found in Menzi's possession does not necessarily prove that the latter owned the shares. A stock certificate is merely a tangible evidence of ownership of shares of stock.[39] Its presence or absence does not affect the right of the registered owner to dispose of the shares covered by the stock certificate. Hence, as registered owners, Campos and Zalamea validly ceded their shares in favor of the Government.

---

[39] *Ponce v. Alsons Cement Corporation*, G.R. No. 139802, December 10, 2002.

Supreme Court E-Library

This assignment is now a *fait accompli* for the benefit of the entire nation.

The contention that the sale of the 214 block to the Bulletin was null and void as the PCGG failed to obtain approval from the Sandiganbayan is likewise unmeritorious. While it is true that the PCGG is not empowered to sell sequestered assets without prior Sandiganbayan approval,[40] this case presents a clear exception because this Court itself, in the Teehankee Resolution, directed the PCGG to accept the cash deposit offered by Bulletin in payment for the Cojuangco and Zalamea sequestered shares subject to the alternatives mentioned therein and the outcome of the remand to the Sandiganbayan on the question of ownership of these sequestered shares.

In light of the foregoing, we are not inclined to disturb the Sandiganbayan's evaluation of the weight and sufficiency of the evidence presented by the Republic and its finding that the evidence adduced by the Estate of Menzi and HMHMI do not prove their allegation that Campos, Cojuangco and Zalamea are Menzi's nominees, taking into account the express admission of Campos that he owned the shares upon Marcos' instruction, the declaration of Zalamea that he does not claim true and beneficial ownership of the shares, and the absolute dearth of evidence regarding Cojuangco's assertion that he is Menzi's nominee.

With regard to the Republic's prayer for damages, we find the same not supported by sufficient evidence.

An award of actual or compensatory damages requires proof of pecuniary loss. In this case, the Republic has not proven with a reasonable degree of certainty, premised on competent proof and the best evidence obtainable, that it has suffered any actual pecuniary loss by reason of the acts of the defendants. Hence, actual or compensatory damages may not be awarded.[41]

---

[40] *Republic v. Sandiganbayan*, G.R. No. 142476, March 20, 2001.

[41] *Sumalpong v. Court of Appeals*, G.R. No. 123404 , February 26, 1997.

Supreme Court E-Library

On the other hand, while no proof of pecuniary loss is necessary in order that moral, temperate, nominal and exemplary damages may be adjudicated, proof of damage or injury should nonetheless be adduced. As found by the Sandiganbayan, however, the Republic failed to show the factual basis for the award of moral damages and its causal connection to defendants' acts. Thus, moral damages, which are designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer[42] may not be awarded. Temperate, nominal, and exemplary damages, attorney's fees, litigation expenses and judicial costs may likewise not be adjudicated for failure to present sufficient evidence to establish entitlement to these awards.

WHEREFORE, the petitions in G.R. No. 152578, G.R. No. 154487 and G.R. No. 154518 are *DENIED*. The *Decision* of the Sandiganbayan dated March 14, 2002 is *AFFIRMED*.

SO ORDERED.

Davide, Jr., C.J., Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., and *Garcia, JJ.,* concur.

Puno, J., in the result.

Azcuna, J., took no part. He was counsel in the case.

Chico-Nazario, J., on leave.

---

[42] *Pantranco v. Kierulf*, G.R. No. 99343, March 13, 1997.