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SECOND DIVISION

[G.R. No. 187951. June 25, 2012]

THE WELLEX GROUP, INC., *petitioner, vs.* **SANDIGANBAYAN,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; PLUNDER LAW (R.A. 7080); FORFEITURE OF WEALTH PROVEN TO BE ILL-GOTTEN INCLUDES THEIR INTERESTS, INCOMES AND ASSETS INCLUDING THE PROPERTIES AND SHARES OF STOCK DERIVED FROM THE DEPOSIT OR INVESTMENT THEREOF FORFEITED IN FAVOR OF THE STATE.— When petitioner Wellex contracted the loan from then Equitable PCI-Bank, the former voluntarily constituted a chattel mortgage over its Waterfront shares, with the subsequent addition of the subject Wellex shares as added security for the loan obligation. Thus, the Wellex loan and the Chattel Mortgage, which were constituted over the Wellex and Waterfront shares of stock, became the asset of the aforementioned IMA Trust Account. In this case, the loan transaction between Wellex and Equitable PCI-Bank, as Investment Manager of the IMA Trust Account, constitutes the principal contract; and the Chattel Mortgage over the subject shares of stock constitutes the accessory contract. It was established during the trial of the plunder case that the source of funding for the loan extended to Wellex was former President Estrada, who had in turn sourced the fund from S/A 0160-62501-5 and coursed it through IMA Trust Account 101-78056-1. After his conviction for the crime of plunder, the IMA Trust Account under the name of Jose Velarde was forfeited. As a consequence, all assets and receivables of the said trust account were also included in the forfeiture, which was not without any legal basis. Section 2 of R.A. 7080, as amended, provides for the forfeiture of the wealth proven to be ill-gotten, as well its interests, thus: x x x **The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment**

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thereof forfeited in favor of the State. x x x There is no dispute that the subject shares of stock were mortgaged by petitioner Wellex as security for its loan. These shares being the subject of a contract that was accessory to the Wellex loan and being an asset of the forfeited IMA trust Account, the said shares necessarily follow the fate of the trust account and are forfeited as well. However, the forfeiture of the said trust account, together with all its assets and receivables, does not affect the validity of the loan transaction between BDO the creditor and Wellex the debtor. The loan continues to be valid despite the forfeiture by the government of the IMA Trust Account and is considered as an asset. Consequently, the forfeiture had the effect of subrogating the state to the rights of the trust account as creditor.

2. ID.; ID.; THE SCOPE OF CRIMINAL FORFEITURE BY THE GOVERNMENT INCLUDES ANY PROPERTY, REAL OR PERSONAL, INVOLVED IN THE CRIME OR TRACEABLE TO THE PROPERTY.— Forfeiture in a criminal case is considered *in personam*, similar to a money judgment that runs against a defendant until it is fully satisfied. This criminal forfeiture is considered part of the criminal proceedings against the defendant, rather than a separate proceeding against the property itself. The scope of criminal forfeiture by the government includes any property, real or personal, involved in the crime or traceable to the property. The term "involved in" has consistently been interpreted broadly by courts to include any property involved in, used to commit, or used to facilitate the crime.

3. ID.; ID.; PETITIONER'S INTERPRETATION OF SECTION 2 OF R.A. 7080 IS NARROW AND RIGID AND DEFEATS RATHER THAN SERVES THE ENDS OF JUSTICE IN PLUNDER CASES.— Petitioner's interpretation of Section 2 of R.A. 7080 is narrow and rigid and defeats rather than serves the ends of justice in plunder cases. Section 2 of R.A. 7080 mandates the court to forfeit not only the ill-gotten wealth, interests earned, and other incomes and assets, but also the properties and shares of stock derived from the deposit or investment. The Sandiganbayan Decision imposed the penalty of forfeiture when it convicted the former President Estrada of the crime of plunder. It is beyond cavil that it found the subject IMA Trust Account traceable to the accounts declared

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to be ill-gotten by the former President. Thus, to rigidly construe the mandate of Section 2 of R.A. 7080, as petitioner would want us to do, is to render the Plunder Law inutile.

4. ID.; ID.; THE SANDIGANBAYAN CORRECTLY LAID THE BASIS OF ITS ORDER OF FORFEITURE.—In its Resolution dated 28 January 2008 (in Criminal Case No. 26558 from which the assailed Resolution subject of this Petition originated), the Sandiganbayan correctly laid the basis of its Order of forfeiture as follows: The provision of Section 2 must be interpreted in its entirely and cannot be confined to words and phrases which are taken out of context. The trunk of the tree of forfeiture under Section 2 is ill-gotten wealth and the branches of the ill-gotten wealth are the interests, incomes, assets, properties and shares of stocks derived from or traceable to the deposit or investment of such ill-gotten wealth. Interpreted otherwise, what should be forfeited are assets in whatever form that are derived or can be traced to the ill-gotten wealth as defined under sub-pars. 1-6, par. (d), Section 1 of the Plunder Law. Should Assets (sic) not derived, nor traceable to the ill-gotten wealth be forfeited in favor of the State, such would result in deprivation of property without due process of law. x x x. No less than Movant had admitted that while the Decision of the Court includes forfeiture of a specific sum, the Plunder Law limits this only to property derived or traceable to the instruments or proceeds of the crime. Not only does the Plunder Law authorize the forfeiture of the ill-gotten wealth as well as any asset acquired with the use of the ill-gotten wealth, Section 6 likewise authorizes the forfeiture of these ill-gotten wealth and any assets acquired therefrom even if they are in the possession of other persons. Thus, Section 6 provides: "Section 6. *Prescription of Crimes* — The crime punishable under this Act shall prescribe in twenty (20) years. However, the rights of the State to receive properties unlawfully acquired by public officers from them or from their nominees or transferees shall not be barred by prescription, laches, or estoppel." Even petitioner admits that the amount of ₱506,416,666.66 was deposited to S/A 0160-62501-5 via a credit memo, and that ₱500 million was subsequently withdrawn from the said savings account, deposited to IMA Trust Account No. 101-78056-1, and then loaned to petitioner. The Sandiganbayan made a categorical finding that former President

Estrada was the real and beneficial owner of S/A 0160-62501-5 in the name of Jose Velarde.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENTS; THE DECEMBER 12, 2007 DECISION OF THE SANDIGANBAYAN IN CRIMINAL CASE NO. 26558 HAS BECOME FINAL AND EXECUTORY AND AS A CONSEQUENCE, THE FINDINGS OF FACT AND LEGAL CONCLUSION OF THE SAID DECISION THAT THE ₱500 MILLION WAS COURSED THROUGH THE *JOSE VELARDE* ACCOUNT ADJUDGED AS ILL-GOTTEN ARE NOW IMMUTABLE AND UNALTERABLE.— We agree with Wellex that the 12 September 2007 Decision of the Sandiganbayan in Criminal Case No. 26558 has become final and executory. As a consequence, the findings of fact and legal conclusion of the said Decision — that the ₱500 million was coursed through the Jose Velarde account adjudged as ill-gotten — are now immutable and unalterable. In addition, petitioner waived its right to correct whatever error it perceived in the assailed Resolutions, when it failed to submit its memorandum in Criminal Case No. 26558 to settle the validity of the BIR's claim over the IMA Trust Account.

6. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NO GRAVE ABUSE OF DISCRETION IS PRESENT IN CASE AT BAR TO MERIT NULLIFICATION OF THE ASSAILED RESOLUTIONS.— Grave abuse of discretion has been defined as such capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. We do not find this situation present in this case to merit the nullification of the assailed Resolutions. It is beyond doubt that IMA Trust Account No. 101-78056-1 and its assets were traceable to the account adjudged as ill-gotten. As such, the trust account and its assets were indeed within the scope of the forfeiture Order issued by the Sandiganbayan in the plunder case against the former President. Thus, it did not commit grave abuse of discretion when it ordered the forfeiture of the trust account in BDO, including the assets and receivables thereof.

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APPEARANCES OF COUNSEL

Corporate Counsels, Philippines Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

SERENO, *J.*:

This is a Petition for *Certiorari* under Rule 65 seeking to nullify the Resolutions dated 24 September 2008 and 02 April 2009 promulgated by the Sandiganbayan (Special Division) in Criminal Case No. 26558, *People of the Philippines v. Joseph Ejercito Estrada*.

Petitioner The Wellex Group, Inc. (Wellex) assails the mentioned Resolutions of the Sandiganbayan, alleging that the latter unduly included 450 million shares of stock of Waterfront Philippines, Inc. in the forfeiture proceedings ordered under respondent's Amended Writ of Execution in Criminal Case No. 26558. Petitioner asserts that the subject shares of stock should not be forfeited as part of the execution process in the plunder case, because Wellex is not a party to the case. Thus, it avers that the Sandiganbayan committed grave abuse of discretion in issuing the questioned Resolutions, which included the shares for forfeiture.

The Facts

On 12 September 2007, the Sandiganbayan, through its Special Division, promulgated a Decision in Criminal Case No. 26558, the plunder case filed against former President Joseph Ejercito Estrada (former President Estrada). The said Decision found him guilty of the crime of plunder and ordered the forfeiture of the following:

Moreover, in accordance with Section 2 of Republic Act No. 7080, as amended by Republic Act No. 7659, the Court hereby declares the forfeiture in favor of the Government of the following:

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(1) The total amount of Five Hundred Forty Two Million Seven Hundred Ninety One Thousand Pesos (₱545,291,000.00) [sic], with interest and income earned, inclusive of the amount of Two Hundred Million Pesos (₱200,000,000.00), deposited in the name and account of the Erap Muslim Youth Foundation.

(2) The amount of One Hundred Eighty Nine Million Pesos (₱189,000,000.00), inclusive of interests and income earned, deposited in the Jose Velarde account.

(3) The real property consisting of a house and lot dubbed as "Boracay Mansion" located at #100 11th Street, New Manila, Quezon City.[1]

On 25 October 2007, President Arroyo granted former President Estrada executive clemency through a Pardon, which he accepted on 26 October 2007.[2] The Pardon, however, expressly stipulates as follows:

The forfeitures imposed by the Sandiganbayan remain in force and in full, including all writs and processes issued by the Sandiganbayan in pursuance hereof, except for the bank account(s) he owned before his tenure as President.[3]

With this development, the Special Division of the Sandiganbayan on 26 October 2007 ordered the issuance of a Writ of Execution for the satisfaction of the judgment, which was not covered by the Executive Clemency granted to former President Estrada.[4] On 05 November 2007, the Writ of Execution[5] was issued against him.

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[1] *Rollo,* p. 332, Sandiganbayan (Special Division) Decision dated 12 September 2007 penned by then former Presiding (now Supreme Court) Justice Teresita J. Leonardo-De Castro and concurred in by Associate Justice Francisco H. Villaruz, Jr. and former Sandiganbayan Associate (now Supreme Court) Justice Diosdado M. Peralta.

[2] Sandiganbayan Criminal Case No. 26558 records, Vol. 59, p. 81.

[3] *Id.*

[4] *Id.* at 86-87.

[5] *Id.* at 113-114.

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On 09 November 2007, former President Estrada filed a Motion to Quash Writ of Execution.[6] He alleged that the Writ of Execution expanded the 12 September 2007 Decision by including within the scope of forfeiture "any and all" of his personal and real properties. He believes that the added portion in the writ is tantamount to the imposition of a penalty and is thus a nullity.[7]

In the plunder case, the Office of the Special Prosecutor filed an Opposition[8] to the Motion to Quash of the former President. It rebutted his averments of movant Estrada and asserted its position that the Writ of Execution sought to be quashed did not vary the 12 September 2007 Decision of the Sandiganbayan, but in fact only implemented Section 2 of Republic Act No. 7080,[9] the Plunder Law, under which his was convicted.[10]

On 21 January 2008, Wellex wrote a letter[11] to Banco De Oro expressing the desire to retrieve the Waterfront shares the former had used as collateral to secure an earlier loan obligation

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[6] *Id.* at 121.

[7] *Id.* at 125.

[8] *Id.* at 158.

[9] R.A. No. 7080 – Section 2 (as amended). *Definition of the Crime of Plunder; Penalties*. - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty million pesos (₱50,000,000.00) shall be guilty of the crime of plunder and shall be punished by *reclusion perpetua* to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State.

[10] Sandiganbayan Criminal Case No. 26558, records, Vol. 59, p. 163.

[11] *Id.* at 280.

to Equitable-PCI Bank. It was at this time that Wellex became aware of the Writ of Constructive Distraint issued by the BIR to Investment Management Account (IMA) Trust Account No. 101-78056-1 in relation to the plunder case. While petitioner admits the existence of its loan and acknowledges Equitable-PCI Bank as the lender, the former wants the mortgaged shares back. Alleging that its loan obligation for which the shares were given as collateral has been extinguished, petitioner says:

> It appears that interest payments on the loan were made for a certain period but these payments stopped at some point in time. Inquiries resulted in our view that coincident to the stoppage of interest payments, **principal payment of the obligation was made by or on behalf of the borrower, not to your bank as investment manager, but instead directly to the owner of the account.** THE WELLEX GROUP, INC. is presently interested in retrieving the shares given as security for the loan obligation which apparently has been extinguished. (Emphasis supplied)[12]

On 28 January 2008, the Sandiganbayan promulgated a Resolution[13] partially granting the Motion to Quash of former President Estrada. It qualified its ruling by stating that the forfeiture process under the Plunder Law was limited only to those proven to be traceable as ill-gotten. The dispositive portion of the 28 January 2008 Resolution reads:

> NOW THEREFORE, you are hereby commanded to cause the forfeiture in favor of the government of the abovementioned amounts and property listed in the said dispositive portion of the decision, including payment in full of your lawful fees for the service of the writ.
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> **In the event that the amounts or property listed for forfeiture in the dispositive portion be insufficient or could no longer be**

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[12] *Id.* at 281.

[13] Resolution dated 28 January 2008 by Sandiganbayan Justice Francisco H. Villaruz, Jr. and concurred in by former Sandiganbayan (now Supreme Court Associate) Justice Diosdado M. Peralta and Justice Adolfo A. Ponferrada, Sandiganbayan Criminal Case No. 26558; records, Vol. 59, pp. 243 to 251.

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found, you are authorized to issue notices of levy and/or garnishment to any person who is in possession of any and all form of assets that is traceable or form part of the amounts or property which have been ordered forfeited by this Court, including but not limited to the accounts receivable and assets found at Banco De Oro (the successor in interest of Equitable PCI Bank) in the personal IMA Trust Account No. 101-78056-1 in the name of Jose Velarde (which has been adjudged by the Court to be owned by former President Joseph Ejercito Estrada and the depositary of the ill-gotten wealth) consisting of Promissory Notes evidencing the loan of ₱500,000,000.00 with due date as of August 2, 2000 and the chattel mortgage securing the loan; Waterfront shares aggregating ₱750,000,000 shares (estimated to be worth ₱652,000,000.00 at the closing price of ₱0.87 per share as of January 21, 2008); and Common Trust Fund money in the amount of ₱95,759,000.00 plus interest earned thereby.

You are hereby directed to submit a weekly report on your proceedings in the implementation of this Writ of Execution. (Emphasis supplied)

Pursuant to the 28 January 2008 Resolution, the Sandiganbayan issued an Amended Writ of Execution on 19 February 2008 directing Sheriff Edgardo A. Urieta, Chief Judicial Staff Officer, Security and Sheriff Services of the Sandiganbayan, to implement the amended writ and to submit a weekly report through the Executive Clerk of Court.[14]

On 22 February 2008, Sheriff Urieta submitted a Sheriff's Progress Report on the implementation of the Amended Writ of Execution. The report stated, among others, that Banco De Oro Unibank, Inc. (BDO), having acquired Equitable PCI-Bank, informed his office that the Jose Velarde Account was under the Constructive Distraint issued by the Bureau of Internal Revenue (BIR). Thus, the assets under the said account could not yet be delivered to the Sandiganbayan pursuant to the Writ of Execution, pending the termination of the investigation conducted by the National Investigation Division of the BIR.[15]

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[14] *Rollo,* pp. 336-338.

[15] Sandiganbayan records (Criminal Case No. 26558), Vol. 59, pp. 267-268.

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On 18 April 2008, BDO filed through its counsel a Manifestation (with Motion for Leave to File Manifestation) confirming to the Sandiganbayan that the assets of IMA Trust Account No. 101-78056-1 (as of 02 October 2002) under the name of Jose Velarde remained intact.[16] The assets of the trust account, which included 450 million shares of Waterfront Philippines, was under the auspices of its Trust Department. Those assets remained on hold by virtue of a Constructive Distraint issued on January 2001 by the BIR through its then officer in charge, Commissioner Lilian B. Hefti.[17] BDO also sought the guidance of the Sandiganbayan on how to proceed with the disposition of the subject IMA Trust Account in view of the lien by the BIR and the claim of Wellex.[18]

On 16 May 2008, the Sandiganbayan held a hearing, in which the parties explained their respective positions on the propriety of the levy over the subject shares. Thereafter, it ordered the parties to submit their respective memoranda.[19] Only the BIR filed its Memorandum, while petitioner Wellex failed to file any.[20]

On 28 May 2008, instead of filing its memorandum, BDO made a submission informing the Sandiganbayan that the bank had not yet received any payment from Wellex for the latter's principal obligation, which was secured by the subject Waterfront shares and covered by a Promissory Note and a chattel mortgage, both dated 04 February 2000.[21]

We quote the Certification issued by BDO as follows:

C E R T I F I C A T I O N

As the Investment Manager of **Investment Management Account (IMA) No. 101-78056-1** covered by the Investment Management

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[16] *Id.* at 314.

[17] *Id.* at 314- 317.

[18] *Id.* at 316.

[19] *Id.* at 387.

[20] *Id.* at 432.

[21] *Id.* at 407.

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Agreement dated February 4, 2000, we hereby certify that we have not received any principal payment on the loan/investment amounting to **PESOS: FIVE HUNDRED MILLION (₱500,000,000.00)** granted/made by said account to The Wellex Group, Inc. covered by the Promissory Note and Chattel Mortgage dated February 4, 2000, as amended on August 2, 2000 (the "Loan"). Thus, the same remains outstanding in the books of Equitable PCIBank, Inc. — Trust Banking (now Banco de Oro Unibank-Trust and Investments Group).

We likewise certify that interest payments on the Loan totalling **PESOS: EIGHTY MILLION & 00/100 (₱80,000,000.00)** were received from The Wellex Group, Inc. starting March 6, 2000 until January 29, 2001. No further interest payments were made thereafter. Such interest payments were invested by the Bank in various investment outlets such that, as of date, it now amounts to **PESOS: NINETY SIX MILLION FOUR HUNDRED EIGHT THOUSAND NINE HUNDRED EIGHTY SEVEN & 90/100 (₱96,408,987.90)**.

This certification is being issued for whatever legal purpose this may serve.

May 28, 2008, Makati City.[22] (Emphasis in the original)

On 24 September 2008, the Sandiganbayan promulgated a Resolution dated 15 September 2008 acknowledging the validity of the claim of the BIR against the former President and his spouse for income tax deficiency. However, the Resolution noted that despite the prior issuance by the BIR of a Constructive Distraint over the subject trust account, it failed to issue a formal assessment to the spouses Estrada. The Sandiganbayan noted that the BIR had not yet finished its investigation to determine the deficiency income tax of the spouses for the taxable year 1999. The anti-graft court held that it could not wait for the BIR to finish the investigation of the matter before the former could proceed with the forfeiture of the IMA Trust Account, considering that its Decision convicting the former President had already become final.[23]

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[22] *Id*.

[23] Penned by former Sandiganbayan Special Division Presiding Justice and Chairperson (now Supreme Court Associate Justice) Diosdado M. Peralta and concurred in by Sandiganbayan Associate Justices Francisco H. Villaruz, Jr. and Rodolfo A. Ponferrada, *rollo*, p. 84.

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Thus, the Sandiganbayan ruled that the subject IMA Trust Account was ripe for forfeiture after the conviction of former President Estrada in the plunder case had become final and executory. The dispositive portion of its Resolution reads:

> WHEREFORE, in the light of the foregoing, Mr. Edgardo Urieta, SB Chief Judicial Officer, Security and Sheriff Services, this Court, is hereby directed to issue another NOTICE TO DELIVER to Banco De Oro Unibank, Inc. (formerly BDO-EPCIB, Inc.) for the latter to deliver/remit to this Court the amount of ONE HUNDRED EIGHTY NINE MILLION SEVEN HUNDRED THOUSAND (₱189,700,000.00) PESOS, inclusive of interest and income earned, covered by IMA Trust Account No. 101-78056-1 in the name of Jose Velarde, within fifteen (15) days from receipt thereof.[24]

On 11 October 2008, the Commissioner of Internal Revenue (CIR), as well as Wellex, filed a Motion for Reconsideration (MR) of the 24 September 2008 Resolution of the Sandiganbayan.[25]

On 02 April 2009, the Special Division of the Sandiganbayan promulgated a Resolution[26] denying the MRs filed by the CIR and petitioner Wellex. In denying the MR of the CIR, the Sandiganbayan ruled that the former's right to forfeit the subject IMA Trust Account was anchored on the Decision convicting former President Estrada under the Plunder Law and had already become final and executory. It ruled that the CIR's claim over the IMA Trust Account rested on flimsy grounds, because the assessment issued to the spouses Estrada over an alleged deficiency in their income tax payment was not yet final. Hence, it concluded that the Constructive Distraint could not defeat the court's preferential right to forfeit the assets of the subject IMA Trust Account, which was included in the Decision on the plunder case.[27]

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[24] *Id.* at 84-85.

[25] *Rollo*, pp. 339-379.

[26] *Id.* at 86, penned by former Sandiganbayan Special Division Justice Francisco H. Villaruz, Jr. and concurred in by Associate Justices Rodolfo A. Ponferrada and Ma. Cristina G. Cortes-Estrada.

[27] *Id.* at 94.

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The Sandiganbayan also denied the MR of Wellex. It ruled that petitioner failed to rebut the 28 May 2008 BDO Certification, stating that the latter had not yet settled its loan obligation to Equitable-PCIBank (now BDO). The Sandiganbayan considered the claim of Wellex — that the latter had already settled its loan obligation to the owner of the account — to have been significantly contradicted by petitioner's (a) failure to rebut the said BDO Certification and (b) express admission that then Equitable-PCIBank was the creditor in the loan transaction for which the shares were used as collateral.[28] Hence, the Sandiganbayan dismissed petitioner's Opposition to the Notice To Deliver issued against BDO for the delivery or remittance of the ₱189,700,000, inclusive of interests and income earned under IMA Trust Account No. 101-78056-1 under the name of Jose Velarde. The court even suggested that, for Wellex to retrieve the mortgaged Waterfront shares of stock, petitioner should pay its outstanding loan obligation to BDO, so that the latter could remit the payment to the Sandiganbayan.[29]

Hence, the present Petition before this Court.

THE ISSUES

The following are the issues proffered by petitioner for resolution:

I. THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE RESOLUTION DATED 24 SEPTEMBER 2008 AND THE RESOLUTION DATED 02 APRIL 2009, BOTH OF WHICH UNDULY EXPANDED THE COVERAGE OF THE 12 SEPTEMBER 2007 DECISION IN CRIMINAL CASE NO. 26558.

II. THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT THE FUND IN THE IMA ACCOUNT WAS TRACEABLE TO THE ₱189.7

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[28] *Id.* at 90.

[29] *Id.*

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MILLION ILL-GOTTEN WEALTH DEPOSITED IN THE JOSE VELARDE ACCOUNT.

A. THE IMA ACCOUNT WAS SOURCED FROM PLACEMENT ACCOUNT NO. 0160-62501-5.

B. THE PHP500 MILLION FUND IN THE IMA ACCOUNT, WHICH WAS LOANED TO PETITIONER, WAS NOT SOURCED FROM THE PHP189.7 MILLION ILL-GOTTEN COMMISSION SUBJECT OF THE FORFEITURE.

Our Ruling

We **DENY** the Petition of Wellex Group for lack of merit.

The 12 September 2007 Decision of the Sandiganbayan in Criminal Case No. 26558 convicted former President Estrada of the crime of plunder under Republic Act (R.A.) No. 7080, as amended. In convicting him in the plunder case the court unmasked him as the beneficial owner of the Jose Velarde accounts adjudged as ill-gotten wealth. It was also established during the trial of that case that the ₱500 million lent to herein petitioner came from the former President and was coursed through the said trust account. This fact is supported by documentary as well as the testimonial evidence coming from the former President himself.

Petitioner does not dispute the loan that was granted to them by then Equitable PCI-Bank (now BDO) in the amount of ₱500 million. The loan is evidenced by a Promissory Note and a Chattel Mortgage dated 4 February 2000 executed between herein petitioner as "Borrower" and then Equitable PCI-Bank as "Lender."[30] The loan transaction was also admitted by Wellex through its legal counsel's letter dated 05 November 2008, when it formally demanded the return of the Waterfront and Wellex shares.[31]

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[30] *Id.* at 110.

[31] *Id.* at 122-123.

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The 12 September 2007 Decision of the Sandiganbayan in the plunder case highlighted the testimony of former President Estrada with regard to the circumstances surrounding the ₱500 million loan to herein petitioner. It traced the source of the funding to IMA Trust Account No. 101-78056-1 in the name of Jose Velarde, who turned out to be the former President. The Sandiganbayan held as follows:

> The evidence of the Defense shows that prior to February 4, 2000, the account balance of S/A 0160-62501-5 of Jose Velarde was ₱142,763,773.67. (Exh. 127-O) There was therefore not enough funds in the account to transfer to the Trust Account. Thus, the Debit-Credit Authority could not be implemented.
>
> Subsequently, a credit memo for ₱506,416,666.66 was issued in favor of the said Jose Velarde S/A 0160-62501-5 account. As per the testimony of defense witness, Beatriz Bagsit, the amount of ₱506,416,666.66 represented the principal and interest of a preterminated placement of S/A 0160-62501-5. The placement was not in the name of Dichaves but in the name of an account number, *i.e*. Account No. 0160-62501-5 and behind that account is Jose Velarde. [TSN, April 18, 2005, p. 37] Eventually the ₱500,000,000.00 was withdrawn from the savings account in exchange for an MC payable to trust. [*Ibid*. pp. 30, 31]
>
> Consequently, while the funding for the ₱500,000,000.00 did not come via the debit-credit authority, nonetheless, **the funding of the ₱500,000,000.00 came from S/A 0160-62501-5 of Jose Velarde**.
>
> Moreover, the debit-credit authority was not implemented because Bagsit kept the debit-credit authority and did not give it to anybody. [TSN, April 13, 2005, p. 116]
>
> **Neither does the non-implementation of the Debit-Credit Authority which FPres. Estrada signed as Jose Velarde disprove the fact that FPres. Estrada admitted that S/A 0160-62501-5 in the name of Jose Velarde is his account when he admitted affixing his signature on the Debit-Credit Authority as Jose Velarde.**
>
> **The so-called "internal arrangements" with the bank, involved the use of S/A 0160-62501-5 which had been in existence since August 26, 1999 as the funding source of the ₱500,000,000.00 to be placed in the Trust account for lending to Gatchalian. The fact that the ₱500,000,000.00 funding was not effected by**

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a debit-credit transaction but by a withdrawal of ₱500,000,000.00 from the said S/A 0160-62501-5 proves that the money lent to Gatchalian was the personal money of FPres. Estrada through the Jose Velarde account of which he is the owner. As explained by FPres. Estrada, "William Gatchalian is a big businessman. ***Isang malaking negosyante at siya po ay may ari ng Wellex group of companies at siya rin po ay isa sa tumulong sa aming partido noong nakaraang 1998 presidential election*****."*** [TSN, May 24, 2006, p. 23]

Pres. Estrada further testified: *"Hindi lang po dahil doon sa internal arrangement. Hindi lang po dahil gusto kong tulungan si Mr. William Gatchalian kundi higit po sa lahat ay nakita ko ang kapakanan noong mahigit na tatlong libong (3000) empleyado na kung sakaling hindi mapapautang si Mr. William Gatchalian, maaring magsara ang kanyang mga kumpanya at yong mga taong, mahigit tatlong libong (3,000) empleyado kasama na yong kanilang mga pamilya ay mawawalan ng trabaho. AT INISIP KO RING NA WALA NAMING (SIC) GOVERNMENT FUNDS NA INVOLVE KAYA HINDI NA PO AKO NAGDALAWANG ISIP NA PIRMAHAN KO."*

Moreover, as pointed out by the Prosecution, there was no need for the internal arrangement since the loan to Gatchalian could have been extended by EPCIB directly considering that Gatchalian had put up sufficient collateral for the loan.

From the foregoing, the ineluctable conclusion is that the so-called internal arrangement which allegedly prompted FPres. Estrada to sign the various documents presented to him by Clarissa Ocampo is a futile attempt to escape the consequence of his admission that he signed as Jose Velarde which leads to the legal and indisputable conclusion that FPres. Estrada is the owner of the Jose Velarde Accounts.[32] (Emphasis supplied and citations omitted)

From the above findings, it is clear that the funding for the loan to Wellex was sourced from Savings Account No. 0160-62501-5 and coursed through the IMA Trust Account. This savings account was under the name of Jose Velarde and was forfeited by the government after being adjudged as ill-gotten. The trust account can then be traced or linked to an account

[32] *Id.* at 184-187.

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that was part of the web of accounts considered by the Sandiganbayan as ill-gotten.

The crux of the problem is whether the Sandiganbayan unduly expanded the scope of its 12 September 2007 Decision when it issued the Resolutions that specified the forfeiture of the assets of the subject IMA Trust Account, including the Waterfront and Wellex shares owned by petitioner.

We rule in the negative and **affirm** these Resolutions dated 24 September 2008 and 02 April 2009 issued by the Sandiganbayan issued in Criminal Case No. 26558.

When petitioner Wellex contracted the loan from then Equitable PCI-Bank, the former voluntarily constituted a chattel mortgage over its Waterfront shares, with the subsequent addition of the subject Wellex shares as added security for the loan obligation. Thus, the Wellex loan and the Chattel Mortgage, which were constituted over the Wellex and Waterfront shares of stock, became the asset of the aforementioned IMA Trust Account. In this case, the loan transaction between Wellex and Equitable PCI-Bank, as Investment Manager of the IMA Trust Account, constitutes the principal contract; and the Chattel Mortgage over the subject shares of stock constitutes the accessory contract.

It was established during the trial of the plunder case that the source of funding for the loan extended to Wellex was former President Estrada, who had in turn sourced the fund from S/A 0160-62501-5 and coursed it through IMA Trust Account 101-78056-1. After his conviction for the crime of plunder, the IMA Trust Account under the name of Jose Velarde was forfeited. As a consequence, all assets and receivables of the said trust account were also included in the forfeiture, which was without any legal basis.

Section 2 of R.A. 7080, as amended, provides for the forfeiture of the wealth proven to be ill-gotten, as well its interests, thus:

SECTION 2. Definition of the Crime of Plunder; Penalties. — Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business

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associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty million pesos (₱50,000,000.00) shall be guilty of the crime of plunder and shall be punished by *reclusion perpetua* to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. **The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State.** (Emphasis supplied)

There is no dispute that the subject shares of stock were mortgaged by petitioner Wellex as security for its loan. These shares being the subject of a contract that was accessory to the Wellex loan and being an asset of the forfeited IMA Trust Account, the said shares necessarily follow the fate of the trust account and are forfeited as well. However, the forfeiture of the said trust account, together with all its assets and receivables, does not affect the validity of the loan transaction between BDO the creditor and Wellex the debtor. The loan continues to be valid despite the forfeiture by the government of the IMA Trust Account and is considered as an asset. Consequently, the forfeiture had the effect of subrogating the state to the rights of the trust account as creditor.

We note that even at this point, Wellex generally alleges that it has paid its loan obligation directly to its principal or creditor without proffering any proof of that payment. Also, petitioner does not reveal the identity of its alleged principal or creditor to which the former made its payment to extinguish its loan obligation relevant to this case. These matters render petitioner's claim of payment highly doubtful. Thus, the Sandiganbayan was in point when it stated in its 28 January 2008 Resolution in Criminal Case No. 26558 that the Decision dated 12 September 2007 included forfeiture as a penalty. In its assailed 02 April 2008

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Resolution, it proceeded from the preceding legal premises when it made a suggestion to petitioner regarding the latter's intent to retrieve the shares subject of this Petition, *viz*:

> If Wellex wants to retrieve the collaterals it gave to BDO, it should pay its outstanding loan to BDO and from the proceeds of the payment, BDO should remit to the Court the amount of ₱189,000,000.00 inclusive of interest and income earned.[33]

Wellex tries to convince this Court that the source of the funding for the former's loan was the personal funds of the former President; thus, these funds should not have been forfeited. Petitioner details in its Petition how the ₱500 million was sourced and eventually lent to it.[34] We are, however, not persuaded by its arguments.

We agree with Wellex that the 12 September 2007 Decision of the Sandiganbayan in Criminal Case No. 26558 has become final and executory. As a consequence, the findings of fact and legal conclusion of the said Decision — that the ₱500 million was coursed through the Jose Velarde account adjudged as ill-gotten — are now immutable and unalterable. In addition, petitioner waived its right to correct whatever error it perceived in the assailed Resolutions, when it failed to submit its memorandum in Criminal Case No. 26558 to settle the validity of the BIR's claim over the IMA Trust Account.[35]

Petitioner also argues that since the dispositive portion of the 12 September 2007 Decision in Criminal Case No. 26558 does not explicitly mention the IMA Trust Account, its inclusion in the assailed Resolutions unduly expands the Decision. We do not find merit in this argument.

Forfeiture in a criminal case is considered *in personam*, similar to a money judgment that runs against a defendant until it is

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[33] *Id.* at 90.

[34] *Id.* at 59.

[35] *Id.* at 82.

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fully satisfied.[36] This criminal forfeiture is considered part of the criminal proceedings against the defendant, rather than a separate proceeding against the property itself.[37] The scope of criminal forfeiture by the government includes any property, real or personal, involved in the crime or traceable to the property. The term "involved in" has consistently been interpreted broadly by courts to include any property involved in, used to commit, or used to facilitate the crime.[38]

Petitioner's interpretation of Section 2 of R.A. 7080 is narrow and rigid and defeats rather than serves the ends of justice in plunder cases. Section 2 of R.A. 7080 mandates the court to forfeit not only the ill-gotten wealth, interests earned, and other incomes and assets, but also the properties and shares of stock derived from the deposit or investment. The Sandiganbayan Decision imposed the penalty of forfeiture when it convicted the former President Estrada of the crime of plunder. It is beyond cavil that it found the subject IMA Trust Account traceable to the accounts declared to be ill-gotten by the former President. Thus, to rigidly construe the mandate of Section 2 of R.A. 7080, as petitioner would want us to do, is to render the Plunder Law inutile.

In its Resolution dated 28 January 2008 (in Criminal Case No. 26558 from which the assailed Resolutions subject of this Petition originated), the Sandiganbayan correctly laid the basis of its Order of forfeiture as follows:

> The provision of Section 2 must be interpreted in its entirety and cannot be confined to words and phrases which are taken out of context. The trunk of the tree of forfeiture under Section 2 is ill-gotten wealth and the branches of the ill-gotten wealth are the interests, incomes, assets, properties and shares of stocks derived from or traceable to the deposit or investment of such ill-gotten wealth.

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[36] *U.S. v. Delco Wire*, 772 F. Supp. 1511 (1991).

[37] *U.S. v. Long*, 654 F. 2d 911, 916 (3rd Cir. 1981) as cited in *U.S. v. Delco Wire*.

[38] *U.S. v. Schlesinger*, 396 F. Supp. 2d 267 (2005).

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Interpreted otherwise, what should be forfeited are assets in whatever form that are derived or can be traced to the ill-gotten wealth as defined under sub-pars. 1-6, par. (d), Section 1 of the Plunder Law. Should Assets (sic) not derived, nor traceable to the ill-gotten wealth be forfeited in favor of the State, such would result in deprivation of property without due process of law.

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No less than Movant had admitted that while the Decision of the Court includes forfeiture of a specific sum, the Plunder Law limits this only to property derived or traceable to the instruments or proceeds of the crime.

Not only does the Plunder Law authorize the forfeiture of the ill-gotten wealth as well as any asset acquired with the use of the ill-gotten wealth, Section 6 likewise authorizes the forfeiture of these ill-gotten wealth and any assets acquired therefrom even if they are in the possession of other persons. Thus, Section 6 provides:

> "Section 6. *Prescription of Crimes* – The crime punishable under this Act shall prescribe in twenty (20) years. However, the rights of the State to receive properties unlawfully acquired by public officers from them or from their nominees or transferees shall not be barred by prescription, laches, or estoppel."[39]

Even petitioner admits that the amount of 506,416,666.66 was deposited to S/A 0160-62501-5 via a credit memo, and that 500 million was subsequently withdrawn from the said savings account, deposited to IMA Trust Account No. 101-78056-1, and then loaned to petitioner. The Sandiganbayan made a categorical finding that former President Estrada was the real and beneficial owner of S/A 0160-62501-5 in the name of Jose Velarde.

Grave abuse of discretion has been defined as such capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The abuse of discretion must be so patent and

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[39] Sandiganbayan records (Criminal Case No. 26558), Vol. 59, pp. 248-250.

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gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[40] We do not find this situation present in this case to merit the nullification of the assailed Resolutions.

It is beyond doubt that IMA Trust Account No. 101-78056-1 and its assets were traceable to the account adjudged as ill-gotten. As such, the trust account and its assets were indeed within the scope of the forfeiture Order issued by the Sandiganbayan in the plunder case against the former President. Thus, it did not commit grave abuse of discretion when it ordered the forfeiture of the trust account in BDO, including the assets and receiveables thereof.

WHEREFORE, we **DISMISS** the Petition of Wellex for lack of merit and **AFFIRM** the Resolutions dated 24 September 2008 and 02 April 2009 promulgated by the Sandiganbayan (Special Division) in Criminal Case No. 26558, *People of the Philippines v. Joseph Ejercito Estrada.*

SO ORDERED.

Brion (Acting Chairperson), Villarama, Jr.,[*] *Perez,* and *Reyes, JJ.,* concur.

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[40] *Francisco v. Desierto*, G.R. No. 154117, 02 October 2009, 602 SCRA 50.

[*] Designated as additional member per Raffle dated 25 June 2012 in lieu of Senior Associate Justice Antonio T. Carpio who recused himself from the case due to prior inhibition in related plunder cases.