

IN RE: EX PARTE APPLICATION FOR THE ISSUANCE OF AN ORDER ALLOWING INQUIRY INTO OR EXAMINATION OF CERTAIN BANK ACCOUNTS

Ponente: GARCIA-FERNANDEZ, J.

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GARCIA-FERNANDEZ, J.:

This is an Ex-Parte Application filed by the REPUBLIC OF THE PHILIPPINES, represented by the ANTI-MONEY LAUNDERING COUNCIL, by counsel, seeking certain bank accounts, pursuant to Section 11 of Republic Act No. 9160 (RA 9160), also known as the Anti-Money Laundering Act of 2001, as amended by Republic Act No. 10167 (RA 10167).

The aforementioned application alleges the following facts:

In a letter dated November 19, 2013, the Philippine Department of Justice (RP-DOJ) transmitted to the AMLC the letter dated May 6, 2013 of Donald D. Ashley, United States of America Department of Justice (US-DOJ) Attaché, requesting assistance in the investigation being conducted by the US-DOJ and the Special Inspector for Afghanistan Reconstruction on Thomas Shields (Shields), Kevin Lawler (Lawler), a certain “Peter” and Konstrak Construction Company, Ltd. (also known as Konstrak International, Inc. [Konstrak]), for allegedly bribing and accepting kickbacks, in exchange for assistance in obtaining a construction contract from the United States Army Corps of Engineers (USACE) in Afghanistan. The request was made pursuant to the RP-US Mutual Legal Assistance Treaty in Criminal Matters.

In this case, the US-DOJ request for mutual assistance complied with the abovementioned legal requirements:

1. An investigation is being conducted on Konstrak, Shields, Lawler, and a certain Peter;
2. The subject individuals are being investigated for possible violations of the following criminal laws of the US:

- i. Bribery of Public Officials – Title 18, United States Code, Section 201;
- ii. Acts Affecting a Personal Financial Interest – Title 18, United States Code, Section 208;
- iii. Fraud - Title 18, United States Code, Section 1343;
- iv. Conspiracy - Title 18, United States Code, Section 371; and
- v. Money Laundering - Title 18, United States Code, Sections 1957 and 1956(h).

3. The subject individuals have been sufficiently identified;
4. The twenty (20) bank accounts of Konstrak with BDO Unibank, Inc. and BPI have been sufficiently identified, particularly:

Bank Name

Account Number

1 BDO Unibank, Inc. FE-0214001146-20120615

- 2 FE-0214001185-20120625
- 3 FE-0214001357-20120731
- 4 IC-12140198561
- 5 IC-1102140198561
- 6 IC-6002148014353
- 7 IC-6002148015864
- 8 IC-6002148020191
- 9 IC-62148014353
- 10 LN-501121001853
- 11 LN-519111001330
- 12 Bank of the Philippine Islands IM0200109200000921018746
- 13 0200109200000000927228025JK
- 14 200109200000921000000
- 15 200141700004171000000
- 16 2001092000000000000000000
- 17 IM0200109200000921018827
- 18 IM0200141700004171004506
- 19 IM0200141700004171004697
- 20 IM0200141700004171004913

5. Initial investigation disclosed that Konstrak's BDO Account No. IC-12140198561 received transfers from KAM Construction on the date alleged in the US request. AMLC investigation also confirmed that a remittance amounting to Four Million Four Hundred Two Thousand Seven Hundred Ninety-Seven Pesos and Fifty Centavos (Php4,402,797.50) (or US\$99,950.00) was made by KAM to Konstrak and credited to the latter's BDO A/C No. IC- 12140198561 on January 31, 2011. As to the other bank accounts in the name of Konstrak, there is a need to inquire into these bank accounts to determine whether the same are related to the unlawful activities of Bribery of Public Officials, Fraud, and/or money laundering;

6. The information, documents, material or objects sought from the covered institutions that may aid in their investigation or prosecution have been properly specified in the request; and

7. The nature or manner in which said information and other evidence are to be produced has been stated in the request.

Based on the foregoing, this Court has determined that probable cause exists that the subject bank accounts are related to unlawful activities as defined in Section 3(i) (15) and (33), and Money Laundering under Section 4 of RA 9160, as amended. Proceeds of the crime, as defined under Rule 3.e of the 2012 Revised Implementing Rules and Regulations (RIRR) of RA 9160, as amended, refers to “an amount derived or realized from an unlawful activity.”

Under Rule 10.b of the 2012 RIRR of RA 9160, probable cause is defined as:

“Probable cause includes such facts and circumstances which would lead a reasonably discreet, prudent or cautious man to believe that an unlawful activity and/or money laundering offense is about to be, is being or has been committed and that the account or any monetary instrument or property sought to be frozen is in any way related to said unlawful activity and/or money laundering.”

In this case, probable cause exists that the foregoing bank accounts of Konstrak with BDO Unibank, Inc. and BPI are related to the unlawful activities of Bribery, Fraud and Money Laundering for which Konstrak is being investigated and based on the following circumstances:

1. KAM, Konstrak, Shields, Lawler and a certain Peter are being investigated for Bribery and Fraud, which are unlawful activities under the AMLA, and Money Laundering;
2. KAM transferred the amount of US\$99,950.00 to Konstrak despite the latter's failure to provide laborers to the project;
3. BDO Account No. IC-12140198561 was used as depository of the transferred funds;
4. Funds of large amounts were withdrawn from Konstrak's BDO A/C No. IC-1102140198561 to purchase foreign exchange from its other accounts: FE-0214001146-20120615, FE-0214001185-20120625, and FE-0214001357-20120731; and
5. Outward remittances were noted in Konstrak's BPI Account No. IM0200109200000921018746 in favor of Bradnams Group, which has interlocking officers with Konstrak.

Section 11 of RA 9160, as amended by RA 10167, provides:

“Notwithstanding the provisions of Republic Act No. 1405, as amended; Republic Act No. 6426, as amended; Republic Act No. 8791 and other laws, the AMLC may inquire into or examine any particular deposit or investment, including related accounts, with any banking institution or non-bank financial institution upon order of any competent court based on an ex parte application in cases of violations of this Act, when it has been established that there is probable cause that the deposits or investments, including related accounts involved, are related to an unlawful activity as defined in Section 3(i) hereof or a money laundering offense under Section 4 hereof; xxx

The Court of Appeals shall act on the application to inquire into or examine any deposit or investment with any banking institution or non-bank financial institution within twenty-four (24) hours from filing of the application.”

WHEREFORE, this Court grants the Ex-Parte Application for Bank Inquiry filed by the applicant Republic of the Philippines represented by the Anti-Money Laundering Council. The latter is allowed to inquire into or examine the following bank accounts of Konstrak International, Inc., pursuant to Section 11 of RA 9160, as amended:

Bank Name Account Number

1 BDO Unibank, Inc. FE-0214001146-20120615

2 FE-0214001185-20120625

3 FE-0214001357-20120731

4 IC-12140198561

5 IC-1102140198561

6 IC-6002148014353

7 IC-6002148015864

8 IC-6002148020191

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- 10 LN-501121001853
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- 16 2001092000000000000000000
- 17 IM0200109200000921018827
- 18 IM0200141700004171004506
- 19 IM0200141700004171004697
- 20 IM0200141700004171004913

SO ORDERED.

Reyes, Jr., (Acting Chairperson) and Acosta, JJ., concur.

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