

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. SANDIGANBAYAN
AND FEDERICO MORENO, RESPONDENTS.***G.R. No. 103059. August 19, 1993*

Ponente: MELO, J.

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Impleaded before the Sandiganbayan as co-defendant in the civil suit for recovery of alleged ill-gotten wealth against Lucio C. Tan, former President Ferdinand E. Marcos, and Imelda R. Marcos, was Federico B. Moreno, Chairman of Philippine Virginia Tobacco Administration, now herein private respondent. Feeling that no genuine factual issue was levelled against him by the Government and wholly convinced that the imputations against him are bereft of factual bases, private respondent availed himself of a mode of discovery sanctioned by Rule 26 which he followed with a motion for summary judgment when the answer to the request for admission contained a major explicit admission. The Second Division of the Sandiganbayan, through Justice Escareal with whom Justices Balajadia and Grospe concurred, entertained the same perception and granted private respondent's motion for summary judgment (pp. 82 and 100, Rollo). Hence, the petition at bar.

The inculpatory allegations lifted from the amended complaint pertinent to private respondent read:

2. The wrongs committed by Defendants, acting singly or collectively and in unlawful concert with one another, include the misappropriation and theft of public funds, plunder of the nation's wealth, extortion, blackmail, bribery, embezzlement and other acts of corruption, betrayal of public trust and brazen abuse of power, as more fully described below, all at the expense and to the grave and irreparable damage of plaintiff and the Filipino people.

X X X

X X X

X X X

8. Defendant FEDERICO MORENO was Chairman of Philippine Virginia Tobacco Administration when Defendant Lucio C. Tan's Fortune Tobacco, Incorporated enjoyed privileges in violation of existing laws, such as but not limited to the importation and purchase of Virginia tobacco in excess of the ceiling allowed by law.

X X X

X X X

X X X

14. Defendant Lucio C. Tan, by himself and/or in unlawful concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, and taking undue advantage of his relationship and influence with defendant Spouses, among others:

X X X

x x x

x x x

(h) established in May, 1985 the Northern Redrying Co., Inc. (NRCI), a Virginia Tobacco Company, which on several instances in 1986 made importations and purchases of about 9,607,482.9 net kilos, in excess of the ceiling set by law, with the active collaboration of Defendants Celso C. Ranola, William T. Wong, Ernesto B. Lim, Benjamin T. Albacita who are all Directors of NRCI and at the time of the establishment of NRCI, were employees of defendant Lucio Tan. Defendant Federico Moreno, as Chairman of the Virginia Tobacco Administration, supervised, approved and/or permitted such importations and purchases.

15. The acts of Defendants, singly or collectively, and in unlawful concert with one another, constitute gross abuse of official position and authority, flagrant breach of public trust and fiduciary obligations, brazen abuse of right and power, unjust enrichment, violation of the Constitution and laws of the Republic of the Philippines, to the grave and irreparable damage of Plaintiff and the Filipino people. (pp. 20-42, Rollo.)

On March 8, 1988, private respondent Moreno submitted his Answer, traversing the expanded complaint by contending inter alia that Section 4 of Presidential Decree No. 655 permits the importation of Virginia Tobacco pursuant to the exigencies of the tobacco industry, and that there is no law which curtails the purchase of local Virginia tobacco. At any rate, private respondent continued, his role as Chairman of the Philippine Virginia Tobacco Administration was then limited to submitting requests for importation to the President of the Philippines for approval (p. 60, Rollo).

Of particular significance too, are documents which private respondent wanted the Republic to admit via a request for admission. The documents, some of which bear then President Marcos' written approval (Exhs. 2-A, 3-A, 4-A, and 5-A) are reproduced hereunder.

Exh. 1 - Moreno

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

January 03, 1991

To Whom It May Concern:

This is to certify that, as per National Tobacco Administration (NTA) and Philippine Virginia Tobacco Administration (PVTA) records, NORTHERN TOBACCO REDRYING COMPANY, INC, was never issued any Authority to Import Foreign Blending Tobacco during the incumbency of Justice Federico B. Moreno, former Chairman/General Manager of PVTA. It is further certified that PVTA records do not reveal/show that former Chairman Justice Federico B. Moreno has ever supervised, approved/and or permitted such tobacco importation or purchase of imported blending tobacco.

This certification is issued upon the request of Justice Federico B. Moreno for record purposes.

(Sgd.) Minda C. Gapuz

MINDA C. GAPUZ

Manager

Market Development &

Regulations Department

(p. 115, Rollo.)

Exh. 2 - Moreno

7 September 1982

Philippine Virginia Tobacco Administration

Cubao, Quezon City, Metro Manila

Attention: Justice Federico B. Moreno

Chairman - Officer-in-Charge

Dear Sirs:

We have the honor to apply for an Import Duty Authority of 3,000,000 kilos for the importation of foreign blending tobacco for the year 1982.

For your reference, our specific tax payment for the year 1981 was P655.8 Million.

We have also the honor to inform you that for the year 1981, we purchased 8.6 Million kilos (threshed and bundles) of local Virginia/Burley tobacco worth about P141.3 Million.

In view of the foregoing, we hope our request will be given your kind consideration and approval.

Very truly yours,

LA SUERTE CIGAR & CIGARETTE FACTORY

(Sgd.) Chung Tiong Tay

CHUNG TIONG TAY

First Vice President &

Assistant General Manager

(p. 116, Rollo.)

Exh. 2-A - Moreno

September 10, 1982

His Excellency

President Ferdinand E. Marcos

Malacanang, Manila

Dear Mr. President:

La Suerte Cigar & Cigarette Factory requests for an import quota of 3 million kilos of foreign leaf tobacco for the year 1982 to be used for blending purposes in its manufacture of cigarettes.

Considering that in 1981 it purchased from the farmers, through trading centers in the North, no less than 8.6 million kilos (threshed and bundled) of local Virginia and Burley tobacco worth about P141.3 million, and that this year it has bought substantially from the farmers tobacco at high prices, we recommend that it be granted the requested allocation to import three (3) million kilos of tobacco for blending purposes to improve the quality of its cigarettes and that PVTa be authorized to issue the corresponding license.

For your consideration and approval.

Respectfully,

(Sgd.) Federico B. Moreno

FEDERICO B. MORENO

Chairman

(p. 117, Rollo.)

Exh. 2-B - Moreno

13 September 1982

MEMORANDUM to -

Chairman Federico B. Moreno

Philippine Virginia Tobacco Administration

I am pleased to inform you that the President has approved the request of the La Suerte Cigar & Cigarette Factory for an import quota of 3 million kilos of foreign leaf tobacco for the year 1982 to be used for blending purposes in its manufacture of cigarettes and for the PVTA to issue the corresponding license. Attached is a copy of your letter dated September 10, 1982 bearing the hand-written approval of the President.

(Sgd.) Juan C. Tuvera

JUAN C. TUVERA

Presidential Executive Assistant

cc.: Mr. Chung Tiong Tay

First Vice President & Asst. Gen. Manager

La Suerte Cigar & Cigarette Factory

South Super Highway, Paranaque Metro Manila

(p. 118, Rollo.)

Exh. 3 - Moreno

14 September 1982

The Chairman/Officer-In-Charge

Philippine Virginia Tobacco Administration

Cubao, Quezon City

Re: Authority to Import Tobacco Leaf

Sir:

In order to satisfy our continuous requirement for foreign tobacco leaf used in blending with locally grown tobacco leaf in the manufacture of our various brands of good quality cigarettes, we would like to seek your permission again to import four (4) million kilograms of foreign tobacco leaf by issuing to us the corresponding Certificate of Authority to Import as required by law.

In support of our request, we would like to inform you that our company has purchased a total of close to forty-five (45) million kilograms locally grown tobacco leaf of various types for the crop year 1982, that includes thirty (30) million kilograms of Flue-Cured Virginia Tobacco; ten (10) million kilograms of Burley and five (5) million kilograms of Native Tobacco.

Hoping for your favorable consideration and approval.

Very truly yours,

(Sgd.) Mariano G. Ordonez

MARIANO G. ORDONEZ

Brig. Gen. AFP (Ret.)

President

(p. 119, Rollo.)

Exh. 3-A - Moreno

October 1, 1982

His Excellency

President Ferdinand E. Marcos

Malacanang, Manila

Dear Mr. President

Fortune Tobacco Corporation requests for an additional import quota of four (4) million kilos of foreign leaf tobacco for the year 1982 to be used for blending purposes in its manufacture of cigarettes.

Considering that in 1982, it purchased from the farmers at high prices through trading centers in the North, no less than thirty (30) million kilograms of flue-cured Virginia tobacco; ten (10) million kilograms of Burley tobacco. We recommend that it be granted the requested additional allocation to import four (4) million kilos of tobacco for blending purposes to improve the quality of its cigarettes and that PVTA be authorized to issue the corresponding license.

For your consideration and approval.

Respectfully,

(Sgd.) Federico B. Moreno

FEDERICO B. MORENO

Chairman

(p. 120, Rollo.)

Exh. 3-B - Moreno

19 November 1982

MEMORANDUM to -

Chairman Federico B. Moreno

Philippine Virginia Tobacco

Administration

I am pleased to inform you that the President has approved the request of the Fortune Tobacco Corporation for an additional import quota of four (4) million kilos of foreign leaf tobacco for the year 1982 to be used for blending purposes in its manufacture of cigarettes, and for the PVTA to issue the corresponding license for the purpose, as embodied in your letter dated October 1, 1982, copy enclosed.

(Sgd.) Juan C. Tuvera

JUAN C. TUVERA

Presidential Executive Assistant

cc.: Brig. Gen. Mariano G. Ordonez (Ret.)

President, Fortune Tobacco Corporation

P.O. Box 3706, Manila

(p. 121, Rollo.)

Exh. 4 - Moreno

25 May 1983

Philippine Virginia Tobacco Administration

Cubao, Quezon City, Metro Manila

Attention: Justice Federico B. Moreno

Chairman - Officer-in-Charge

Dear Sirs:

We have the honor to apply for an Import Authority of 3,000,000 kilos for the importation of foreign blending tobacco for the year 1983.

For your reference, our specific tax payment for the year 1982 was P678,789,000.00.

We have also the honor to inform you that for the year 1982, we purchased 5.98 Million kilos (threshed and bundles) of local Virginia/Burley tobacco worth about 115.7 Million pesos.

In view of the foregoing, we hope our request will be given your kind consideration and approval.

Very truly yours,

LA SUERTE CIGAR & CIGARETTE FACTORY

(Sgd.) Chung Tiong Tay

CHUNG TIONG TAY

First Vice President &

Asst. General Manager

(p. 122, Rollo.)

Exh. 4-A - Moreno

May 26, 1983

His Excellency

President Ferdinand E. Marcos

Malacanang, Manila

Dear Mr. President:

La Suerte Cigar & Cigarette Factory requests for an import quota of 3 million kilos of foreign leaf tobacco for the year 1983 to be used for blending purposes in its manufacture of cigarettes.

Considering that in 1982, its specific tax payment was P678.789 million and it purchased from the farmers, through trading centers in the North, no less than 5.98 million kilos (threshed and bundled) of local Virginia and Burley tobacco worth about P115.7 million, and that this year it has bought substantially from the farmers tobacco at high prices, we recommend that it be granted the requested allocation to import three (3) million kilos of tobacco for blending purposes to improve the quality of its cigarettes and that PVTA be authorized to issue the corresponding license.

For your consideration and approval.

Respectfully,

(Sgd.) Federico B. Moreno

FEDERICO B. MORENO

Chairman

(p. 123, Rollo.)

Exh. 4-B Moreno

June 20, 1983

MEMORANDUM TO -

Chairman Federico B. Moreno

Philippine Virginia Tobacco

Administration

Please be informed that the President has approved the request of La Suerte Cigar and Cigarette Factory to import three (3) million kilos of foreign leaf tobacco for 1983, for blending purposes, subject of your letter dated May 26, 1983, attached.

(Sgd.) Juan C. Tuvera

JUAN C. TUVERA

Presidential Executive Assistant

(p. 124, Rollo.)

Exh. 5 - Moreno

9 April 1983

The Honorable Chairman

Philippine Virginia Tobacco Administration

Consolacion Building, Cubao

Quezon City

Subject: Request for Authority to Import Tobacco

Sir:

Please issue to us the authority to import Four (4) million kilograms of flue-cured tobacco as our initial requirement for imported tobacco for the year 1983. The imported tobacco shall be used by us for blending with locally produced tobacco in the making of our different brands of quality cigarettes.

We thank you for your attention and usual prompt action on every matter.

Very truly yours,

(Sgd.) Mariano G. Ordonez

MARIANO G. ORDONEZ

Brigadier Gen. AFP (Ret.)

President

(p. 125, Rollo.)

Exh. 5-A – Moreno

April 14, 1983

His Excellency

President Ferdinand E. Marcos

Malacanang, Manila

Dear Mr. President:

Fortune Tobacco Corporation requests for an import quota of four (4) million kilos of foreign leaf tobacco for the year 1983 to be used for blending purposes in its manufacture of cigarettes.

Considering that in 1982, it purchased from the farmers at high prices through trading centers in the North, no less than thirty (30) million kilograms of flue-cured Virginia tobacco; ten (10) million kilograms of Burley tobacco and is presently buying the 1983 crop at good reasonable prices, we recommend that it be granted the requested allocation to import four (4) million kilos of tobacco for blending purposes to improve the quality of its cigarettes and that PVTa be authorized to issue the corresponding license.

For your consideration and approval.

Respectfully,

(Sgd.) Federico B. Moreno

FEDERICO B. MORENO

Chairman

(p. 126, Rollo.)

Exh. 5-B - Moreno

April 22, 1983

MEMORANDUM

F O R : Justice Federico B. Moreno

Chairman

Philippine Virginia Tobacco Administration

Quezon City

I wish to inform you that the President has approved on 22 April 1983 your letter dated April 14, 1983 regarding the request of Fortune Tobacco Corporation for an import quota of four (4) million kilos of foreign leaf tobacco for the year 1983 to be used for blending purposes in its manufacture of cigarettes.

(Sgd.) Joaquin T. Venus, Jr.

JOAQUIN T. VENUS, JR.

Deputy Presidential Executive Assistant

(p. 127, Rollo.)

The Republic reacted by admitting the genuineness of Exhibits 5-A and 5-B although it offered the caveat that it was not in a position to deny or admit the varacity of the tenor thereof inasmuch as it has no access to files of the National Tobacco Administration and the Philippine Virginia Tobacco Administration (p. 64, Rollo). This development triggered the submission by private respondent of a motion for summary judgment which posited the thesis that there is no factual issue against him vis-a-vis the sole query of whether he had supervised, approved, or permitted importations of tobacco in favor of Northern Tobacco Redrying, Co., Inc., considering the general and broad averments in the expanded complaint (p. 68, Rollo).

In the course of the hearing on the motion for summary judgment on August 6, 1991, private respondent's counsel initially manifested that he was withdrawing said motion but changed his mind when Commissioner Mario C. Jalandoni of the Presidential Commission on Good Government declared that the Republic is admitting the genuineness and due execution of the documents containing President Marcos' handwritten approval (p. 1, Resolution; p. 82, Rollo).

An exchange of pleadings ensued and on October 21, 1991, the impugned Resolution was promulgated which decreed the dismissal of the complaint against private respondent, but without prejudice to the continuation of the case against the other defendants, thus:

Plaintiff's admission, through counsel (Com. Jalandoni) as to the genuineness and due authenticity of then President Marcos' handwritten notations approving the questioned transactions on Exhibits 3-a, 4--a and 5-a of defendant Moreno's Pre-Trial Brief practically removed or destroyed any factual or legal bases to implicate defendant Moreno therein. From the time plaintiff started compiling its evidence, testimonial as well as documentary, to support the filing of its original Complaint, up to the amendment thereof by an expanded Complaint on January 25, 1988, no amplification or further specification of defendant Moreno's alleged participation or involvement in the questioned transactions had been made. Even after defendant Moreno had

filed his Pre-Trial Brief and, later, his "Request For Admission", plaintiff could not admit or deny the truthfulness of relevant matters of fact, or genuineness of documents marked as Exhibits 1, 2, 3, 4 and 5, inclusive, together with their sub-markings, alleging the following reasons, to wit: (1) it has no access to the files and records of the National Tobacco Administration (NTA) and the Philippine Virginia Tobacco Administration (PVTA); (2) it has not completely and thoroughly examined all other possible sources of information especially defendant Moreno's involvement; (3) it cannot determine with certainty the genuineness and due execution of defendant Moreno's marked exhibits and the truth of relevant allegations therein since these pertain to matters which may have extrinsic circumstances involving private and/or undocumented transaction between and among the defendants in this case; and (4) it needs more time to make a complete and thorough verification through other possible documentary and testimonial evidence it may present during the trial.

Thus, defendant Moreno's motion for summary judgment, viewed from the context by which plaintiff made its answers to the request for admissions, present a classic case for the affirmative application of Section 1, Rule 34 of the Rules of Court. Even if We are to take a view of the evidence most favorable to the plaintiff, giving it the benefit of all favorable inferences, the fact still remains that plaintiff had not successfully made out any bona fide issue or a genuine triable issue of fact which would warrant the denial of the instant motion and necessitate trial thereof. The test is whether the plaintiff had, in its original and Expanded Complaints, as well as in its Answer to the Request for Admission, set out, and maintained the existence of, any genuine issue of fact.

As above-stated, plaintiff had admitted a vital fact which defendant Moreno had offered for admission - that then President Marcos had approved the implementation of the transactions in question. Coupled with defendant Moreno's averment in his Answer that no specific act of illegality had been committed by him, more particularly when he denied that he had any dealing with Northern Tobacco Redrying Co., Inc.; that the latter was ever authorized to import Virginia Tobacco; and that he had any acquaintance with his co-defendants Celso C. Ranola, William T. Wong, Ernesto B. Lim and Benjamin T. Albacita, which plaintiff has not, REPEAT, has not directly or indirectly controverted or overthrown, either in its Expanded Complaint or in its Answer To The Request For Admission, then defendant Moreno's claim that no genuine triable issue of fact exists must be upheld. Furthermore, plaintiff has admitted that it has not dug up or found any document or record to blunt or destroy the allegations of Minda C. Gapuz, PVTA Market Development and Regulations Department Manager, that defendant Moreno had ever supervised, approved and/or permitted any tobacco importation or purchase of imported blending tobacco and that PTA and PVTA records do not show any authority granted to Northern Tobacco Redrying Co., Inc. to import foreign blending tobacco during defendant Moreno's incumbency as General Manager of PVTA. If at all, his admitted referral of applications for such importations to the Office of the President, which acts and approves such application through Pres. Marcos' handwritten notations on the referral letters themselves, and confirmed by memoranda of Pres. Exec. Assts. Tuvera and Venus, only shows that the specific averments of supposed irregularities on the part of defendant Moreno do not support plaintiff's cause of action based on alleged breach of public trust.

Again, even if we accept plaintiff's contention that the "Answer To The Request For Admission" was filed on the last day of the extension period granted by the Court, as shown by the Registry Notice dated July 8, 1991 evidencing the mailing of a copy thereof to counsel for defendant Moreno, and overlook the actual filing of said Answer with the Court on July 17, 1991, still we do not consider such facts decisive anymore for the purpose of sustaining the instant motion for summary judgment, inasmuch as our justifications therefor are based on the admissions and denials reflected in all of plaintiff's pleadings which are material, pertinent and relevant to the issue involved.

The query is posed - should the forms of law be gone through, and the time of the court, the parties and counsel be wasted on the facts and circumstances standing incontrovertible on the record? Our answer is in the negative. The summary judgment procedure is intended to "defeat the laws' delays" by giving prompt relief to

those having a clear-cut claim or defense, to provide a more adequate and elastic procedure for the protection of the rights of the parties and the prompt dispatch of litigation, and does not contemplate that a party must follow his case through the lights and shadows of the evidence in it. All that the rules require, or is meant to require, is that the party must furnish the court with proof of the highest testimony or verification within his power, and thus eliminate any and all issues which have no basis in fact, no matter how well pleaded in form, by allowing the moving party to pierce the allegation of fact in the pleadings. In the case at bar, the incident involved in the motion for summary judgment brings to the fore and positively accentuates the blatant lack, or bankruptcy, in the Expanded Complaint as to any cause of action against defendant Moreno. The facts or combination of facts which would afford plaintiff a right to judicial interference for the purpose of holding defendant Moreno liable in this case is totally wanting. There being no genuine fact in issue, much less any cause of action against defendant Moreno, further proceedings against him would be sheer waste of time and effort. (pp. 12-17, Resolution; pp. 93-98, Rollo)

Following the denial of the motion for reconsideration (p. 100, Rollo), petitioner ascended the judicial ladder through the present petition for certiorari ascribing wanton exercise of discretion on the part of public respondent in declaring extinct the cause of action against Moreno. The Republic argues that instead of disapproving Fortune Tobacco Corporation's application geared towards importation of tobacco, private respondent recommended approval thereof to President Marcos thereby suggesting that private respondent acted in concert with President Marcos and Lucio Tan albeit private respondent knew that the importations had already surpassed the ceiling fixed by Section 4 of Presidential Decree No. 655. Even then, the Republic was frank in representing that no triable issue of fact exists as regards the importations by Northern Redrying Co., Inc. (p. 9, Petition for Review; p. 13, Rollo), which admission in judicio was amplified in the Republic's Reply to private respondent's Comment (p. 170, Rollo).

For his part, private respondent persists in advancing the idea that there is no intrinsic worth which can be gathered from the bare and general statements of petitioner's amended complaint (p. 106, Rollo).

At this juncture, one cannot gainsay the efforts exerted by the Republic, through the collective action of the Presidential Commission on Good Government and the Office of the Solicitor General, in the quest for recovery of alleged ill-gotten wealth accumulated by certain individuals identified with the past regime. We must hasten to add, however, that insofar as the instant petition is concerned, we are of the opinion that the premises set forth in the principal pleading in the court a quo, only with respect to private respondent's participation, suffer a congenital deficiency considering that the allegations there-of fail to spell out the ultimate facts constitutive of the Republic's cause of action (Section 3, Rule 6, Revised Rules of Court).

Paragraphs 2 and 15 of the Amended Complaint, earlier quoted, it cannot be overstressed, are mere conclusions of law unaccompanied by factual and categorical propositions. Verily, the allegations herein involved bear a striking resemblance to the assertions treated in *Tantuico, Jr. vs. Republic* (204 SCRA 428 [1991]) which prompted Justice Padilla to require the PCGG to file a bill of particulars, in the process elucidating:

As quoted above, paragraph 9(a) of the complaint alleges that "Defendant Ferdinand E. Marcos, together with other Defendants, acting singly or collectively, and/or in unlawful concert with one another, in flagrant breach of public trust and of their fiduciary obligations as public officers, with gross and scandalous abuse of right and power and in brazen violation of the Constitution and laws of the Philippines, embarked upon a systematic plan to accumulate ill-gotten wealth." In the light of the rules on pleading and case law cited above, the allegations that defendant Ferdinand E. Marcos, together with the other defendants "embarked upon a systematic plan to accumulate ill-gotten wealth" and that said defendants acted "in flagrant breach of public trust and of their fiduciary obligations as public officers, with gross and scandalous abuse of right and in brazen violation of the Constitution and laws of the Philippines", are conclusions of law unsupported by factual premises.

Nothing is said in the complaint about the petitioner's acts in execution of the alleged "systematic plan to accumulate ill-gotten wealth", or which are supposed to constitute "flagrant breach of public trust", "gross and scandalous abuse of right and power", and "violations of the Constitution and laws of the Philippines". The complaint does not even allege what duties the petitioner failed to perform, or the particular rights he abused.

Likewise, paragraph 15 avers that "defendant Francisco Tantuico, taking undue advantage of his position as Chairman of the Commission on Audit and with grave failure to perform his constitutional duties as such Chairman, acting in concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos facilitated and made possible the withdrawals, disbursements and questionable use of government funds as stated in the foregoing paragraphs to the grave and irreparable damage and injury of Plaintiff and the entire Filipino people." In like manner, the allegation that petitioner "took undue advantage of his position as Chairman of the Commission on Audit," that he "failed to perform his constitutional duties as such Chairman," and acting in concert with Ferdinand E. Marcos and Imelda R. Marcos, "facilitated and made possible the withdrawals, disbursements, and questionable use of government funds as stated in the foregoing paragraphs, to the grave and irreparable damage and injury of plaintiff and the entire Filipino people", are mere conclusions of law. Nowhere in the complaint is there any allegation as to how such duty came about, or what petitioner's duties were, with respect to the alleged withdrawals and disbursements or how petitioner facilitated the alleged withdrawals, disbursements, or conversion of public funds and properties, nor an allegation from where the withdrawals and disbursements came from, except for a general allegation that they came from the national treasury. On top of that, the complaint does not even contain any factual allegation which would show that whatever withdrawals, disbursements, or conversions were made, were indeed subject to audit by the COA.

In this connection, it may well be stated that the Commission on Audit (COA) is an independent, constitutional commission, which has no power or authority to withdraw, disburse, or use funds and property pertaining to other government offices or agencies. This is done by the agency or office itself, the chief or head of which is primarily and directly responsible for the funds and property pertaining to such office or agency. The COA is merely authorized to audit, examine and settle accounts of the various government offices or agencies, and this task is performed not by the Chairman of the COA but by the COA auditors assigned to the government office or agency subject to COA audit.

Thus, in each agency of the government, there is an auditing unit headed by an auditor, whose duty is to audit and settle the accounts, funds, financial transactions, and resources of the agency under his audit jurisdiction. The decision of the auditor is appealable to the Regional Director, whose decision, in turn, is appealable to the COA Manager. Any party dissatisfied with the decision of the COA Manager may bring the matter on appeal to the Commission proper, a collegiate body exercising quasi-judicial functions, composed of three (3) COA Commissioners, with the COA Chairman as presiding officer. It is only at this stage that the COA Chairman would come to know of the matter and be called upon to act on the same, and only if an aggrieved party brings the matter on appeal.

In other words, the Chairman of the COA does not participate in or personally audit all disbursements and withdrawals of government funds, as well as transactions involving government property. The averments in the particular paragraph of the complaint merely assume that petitioner participated in or personally audited all disbursements and withdrawals of government funds, and all transactions involving government property. Hence, the alleged withdrawals, disbursements and questionable use of government funds could not have been, as held by respondent Sandiganbayan, "within the peculiar and intimate knowledge of petitioner as Chairman of the COA."

The complaint further avers in para-graph 17 that "(t)he following Defendants acted as dummies, nominees and/or agents by allowing themselves (i) to be instruments in accumulating ill-gotten wealth through government concessions, orders and/or policies prejudicial to Plaintiff, or (ii) to be incorporators, directors, or members of corporations beneficially held and/or controlled by Defendants Ferdinand E. Marcos, Imelda R. Marcos, Benjamin (Kokoy) T. Romualdez and Juliette Gomez Romualdez in order to conceal and prevent

recovery of assets illegally obtained: Francisco Tantuico xxx." Again, the allegation that petitioner acted as dummy, nominee, or agent by allowing himself "to be used as instrument in accumulating ill-gotten wealth through government concessions, orders and/or policies prejudicial to Plaintiff" or "to be (an) incorporator, director, or member of corporations beneficially held and/or controlled" by the Marcoses and Romualdezes, is a conclusion of law without factual basis.

The complaint does not contain any allegation as to how petitioner became, or why he is perceived to be, a dummy, nominee or agent. Besides, there is no averment in the complaint how petitioner allowed himself to be used as instrument in the accumulation of ill-gotten wealth, what the concessions, orders and/or policies prejudicial to plaintiff are, why they are prejudicial, and what petitioner had to do with the granting, issuance, and or formulation of such concessions, orders, and/or policies. Moreover, Annex "A" of the complaint lists down sixty-one (61) corporations which are supposed to be beneficially owned or controlled by the Marcoses and Romualdezes. However, the complaint does not state which corporations petitioner is supposed to be a stockholder, director, member, dummy, nominee and/or agent. More significantly, the petitioner's name does not even appear in Annex "B" of the complaint, which is a listing of the alleged "Positions and Participations of Some Defendants".

The allegations in the complaint, above-referred to, pertaining to petitioner are, therefore, deficient in that they merely articulate conclusions of law and presumptions unsupported by factual premises. (at pp. 444-447)

What about Paragraph 14(h) which inculpatates private respondent when he supposedly "supervised, approved and/or permitted such importations and purchases"? It may be recalled that it was this portion of the Amended Complaint which was the thrust of private respondent's defense that elicited the corresponding admission from the Republic on the genuineness and due execution of Exhibits 5-A and 5-B. In so responding, the Republic failed to realize that it practically pursued a diametrically opposed and fatal posture because the candid statement carried with it the express acknowledgment that it was President Marcos, not private respondent, who approved the assailed importations. Withal, the language of Exhibits 2-A, 2-B, 3-A, and 3-B show that private respondent, as the Chairman of the Philippine Virginia Tobacco Administration, had no authority or discretion to deny, much less to approve, the corresponding license to import tobacco without referring the matter to the President. Indeed, there would have been no need to submit every application for the President's action if private respondent were clothed with the appropriate faculty to decide on the propriety of importation. Consequently, Paragraph 14(h) of the expanded complaint can hardly serve as legal basis to inculcate private respondent.

At any rate, the Republic's propensity to admit statements from the opposing party with prejudicial repercussions is easily discernible and can be confirmed from the pleadings submitted to us which contain the candid acknowledgment that there is no genuine triable issue of fact insofar as Northern Redrying Co., Inc. is concerned (p. 9, Petition for Review, p. 13, Rollo; pp. 5-7, Reply to Private Respondent's Comments, pp. 170-172, Rollo). Notwithstanding said categorical admission in *judicio*, petitioner offers the excuse that the scenario is different as to Fortune Tobacco Corporation. Yet, we have already said with sufficient emphasis that in view of the admission in the Answer to the request for admission (p. 64, Rollo) as to the genuineness and due execution of the handwritten approval of President Marcos on private respondent's letter vis-a-vis Fortune Tobacco's request for importation (Exhibit 5-A; p. 126, Rollo), petitioner's efforts to press an imaginary issue on this point must be brushed aside on account of the legal axiom against vacillating postures (Article 1431, New Civil Code; Section 4, Rule 129; Section 2(a), Rule 131, Revised Rules on Evidence; *Caltex (Philippines), Inc. vs. Court of Appeals*, 212 SCRA 448 [1992]); *Mentholatum Co., Inc. vs. Mangaliman*, 72 Phil. 524 [1941]).

The Sandiganbayan, therefore, correctly rendered the summary judgment in view of the self-defeating representations of petitioner, for such recourse is well within the purview of Section 3, Rule 34 of the Revised Rules of Court that:

" . . . After the hearing, the judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file together with the affidavits, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

apart from the fact that the expanded complaint was not crafted with enough significant and substantial allegations of ultimate facts to warrant continuation of the trial against private respondent (1 Martin, Rules of Court in the Philippines, Revised ed., 1989, p. 329).

WHEREFORE, the petition is hereby DISMISSED and the Resolutions of the Sandiganbayan dated October 21, 1991 and December 13, 1991, AFFIRMED.

SO ORDERED.

Cruz, Feliciano, Padilla, Bidin, Grino-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Quiason, Puno, and Vitug, JJ., concur.

Narvasa, C.J., no part, related to party.

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