

CESAR E.A. VIRATA, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 106527. April 06, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This petition is a sequel to *Virata vs. Sandiganbayan*[1] and *Mapa vs. Sandiganbayan*[2] which were jointly decided by this Court on 15 October 1991.[3]

Petitioner is among the forty-four (44) co-defendants of Benjamin (Kokoy) Romualdez in a complaint filed by the Republic of the Philippines with the respondent Sandiganbayan on 31 July 1987.[4] The complaint was amended thrice; the last amendment thereto is denominated as the Second Amended Complaint, as expanded per the Court-Approved Manifestation/Motion dated 8 December 1987.[5]

Petitioner moved to dismiss the said case, insofar as he is concerned, on various grounds including the failure of the expanded Second Amended Complaint to state a cause of action. The motion was denied and so was his bid to have such denial reconsidered. He then came to this Court via a special civil action for certiorari imputing upon the respondent Sandiganbayan the commission of grave abuse of discretion in, inter alia, finding that the complaint sufficiently states a cause of action against him. In Our aforementioned Decision of 15 October 1991, We overruled the said contention and upheld the ruling of the Sandiganbayan. However, We stated:[6]

"No doubt is left in Our minds that the questioned expanded Second Amended Complaint is crafted to conform to a well-planned outline that forthwith focuses one's attention to the asserted right of the State, expressly recognized and affirmed by the 1987 Constitution (Section 15, Art. XI), and its corresponding duty, (*Bataan Shipyard & Engineering Co., Inc. vs. PCGG*, 150 SCRA 181, 207) to recover ill-gotten wealth from the defendants named therein; the alleged schemes and devices used and the manipulations made by them to amass such ill-gotten wealth, which are averred first generally and then specifically; and the extent of the reliefs demanded and prayed for. However, as shown above, the maze of unnecessary literary embellishments may indeed raise some doubts on the sufficiency of the statement of material operative facts to flesh out the causes of action. Be that as it may, We are, nevertheless, convinced that the questioned pleading has sufficiently shown viable causes of action.

x x x

If petitioners perceive some ambiguity or vagueness therein, the remedy is not a motion to dismiss. An action should not be dismissed upon a mere ambiguity, indefiniteness or uncertainty, for these are not grounds for a motion to dismiss, but rather for a bill of particulars x x x (*Amaro vs. Sumanguit*, 5 SCRA 707) x x x."

Petitioner was thus compelled to go back to the Sandiganbayan. However, insisting that he "could not prepare an intelligent and adequate pleading in view of the general and sweeping allegations against him in the Second Amended Complaint[7] as expanded," while at the same time remaining "steadfast in his position maintaining his

posture of innocence,"[8] petitioner filed on 30 January 1992 a Motion For a Bill of Particulars.[9] He alleges therein that on the basis of the general and sweeping allegations in the Second Amended Complaint, to wit:

"a. '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.' (par. 2, at p. 3).

b. 'The following Defendants acted as dummies, nominees or agents, by allowing themselves to be (sic) incorporators, directors, board members and/or stockholders of corporations beneficially held and/or controlled by Defendants Benjamin (Kokoy) Romualdez, Ferdinand E. Marcos and Imelda R. Marcos x x x'

x x x

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x x x

(par. 7, at pp. 5-7)

c. 'From the early years of his presidency, Defendant Ferdinand E. Marcos took undue advantage of his powers as President. All throughout the period from September 21, 1972 to February 26, 1986, he gravely abused his powers under martial law and ruled as Dictator under the 1973 Marcos promulgated Constitution. 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 obligation 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:' (par. 9 (a) in the section of the Complaint styled 'General Averments of Defendants' Illegal Acts.' at pp. 12-13).

d. 'Defendants, acting singly or collectively, and/or in unlawful concert with one another, for the purpose of preventing disclosure and avoiding discovery of their unmitigated plunder of the National Treasury and of their other illegal acts, and employing the services of prominent lawyers, accountants, financial experts, businessmen and other persons, deposited, kept and invested funds, securities and other assets estimated at billions of US dollars in various banks, financial institutions, trust or investment companies and with persons here and abroad.' (par. 12, in the same section 'General Averments of Defendants' Illegal Acts' at p. 18)."[10]

which were attempted to be "fully describe[d]" in that "section of the complaint, styled 'Specific Averments of the Defendant's Illegal Acts,'"[11] as follows:

"a. Defendants Benjamin (Kokoy) Romualdez and Juliette Gomez Romualdez, acting by themselves and/or unlawful (sic) concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, and taking undue advantage of their relationship, influence and connection with the latter Defendant spouses, engaged in devices, schemes and strategies to unjustly enrich themselves at the expense of Plaintiff and the Filipino people, among others: (par. 14, at p. 19).

x x x

(i) Gave MERALCO undue advantage x x x (ii) with the active collaboration of Defendant Cesar E. A. Virata be (sic) reducing the electric franchise tax from 5% to 2% of gross receipts and the tariff duty on fuel oil imports by public utilities from 20% to 10%, resulting in substantial savings for MERALCO but without any significant benefit to the consumers of electric power and loss of million (sic) of pesos in much needed revenues to the

government;' (par. 14(b), at pp. 22 and 23)

(ii) 'Secured, in a veiled attempt to justify MERALCO's anomalous acquisition of the electric cooperatives, with the active collaboration of Defendants Cesar E. A. Virata, x x x and the rest of the Defendants, the approval by Defendant Ferdinand E. Marcos and his cabinet of the so-called 'Three-Year Program for the Extension of MERALCO's Services of Areas within the 60 kilometer Radius of Manila,' which required government capital investment amounting to millions of pesos; (par. 14(g), at p. 25)

(iii) 'Manipulated with the support, assistance and collaboration of Philguarantee officials led by Chairman Cesar E. A. Virata and the senior managers of EMMC/PNI Holdings, Inc. led by Jose S. Sandejas, J. Jose M. Mantecon and Kurt S. Bachmann, Jr., among others, the formation of Erectors Holdings, Inc., without infusing additional capital solely for the purpose of making it assume the obligation of Erectors, Inc. with Philguarantee in the amount of P527,387,440.71 with insufficient securities/collaterals just to enable Erectors, Inc. to appear viable and to borrow more capitals (sic), so much so that its obligation with Philguarantee has reached a total of more than P2 Billion as of June 30, 1987. (par. 14(m) P. 29)

(iv) 'The following Defendants acted as dummies, nominees and/or agents by allowing themselves (i) to be used as 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) Romualdez and Juliette Gomez Romualdez in order to conceal and prevent recovery of assets illegally obtained: x x x Cesar E.A. Virata x x x.' (par. 17, at pp. 36-37)

b. 'The acts of Defendants, singly or collectively, and/or in unlawful concert with one another, constitute gross abuse of official and fiduciary obligations, acquisition of unexplained wealth, brazen abuse of right and power, unjust enrichment, violation of the Constitution and laws of the Republic the (sic) Philippines, to the grave and irreparable damage of Plaintiff and the Filipino people' (par. 18, at p. 40)."[12]

the plaintiff, Republic of the Philippines, asserts four (4) alleged "actionable wrongs" against the herein petitioner, to wit:

"a. His alleged 'active collaboration' in the reduction of the electric franchise tax from 5% to 2% of gross receipts and the tariff duty of fuel oil imports by all public utilities from 20% to 10%, which -- as this Honorable Court will take judicial notice of -- was effected through the enactment of Presidential Decree 551:

b. His alleged 'active collaboration' in securing the approval by defendant Marcos and his Cabinet of the 'Three-Year Program for the Extension of MERALCO's Services to Areas Within the 60-Kilometer Radius of Manila' which -- as this Honorable Court will likewise take judicial notice of -- the present government continuously sanctions to date.

c. His alleged 'support, assistance and collaboration' in the formation of Erectors Holdings, Inc.

d. His alleged acting as 'dummy, nominee, and/or agent by allowing' himself '(i) to be used as instrument(s) (sic) in accumulating ill-gotten wealth through government concessions, orders and/or policies prejudicial to Plaintiff' or (ii) to be an incorporator, director, or member of corporations beneficially held and/or controlled by defendants Ferdinand Marcos, Imelda Marcos, Benjamin Romualdez and Juliette Romualdez' in order 'to conceal and prevent recovery of assets illegally obtained.'"[13]

Petitioner claims, however, that insofar as he is concerned, the "foregoing allegations x x x and the purported illegal acts imputed to them as well as the alleged causes of actions are vague and ambiguous. They are not averred with sufficient definiteness or particularity as would enable defendant Virata to properly prepare his

answer or responsive pleading." [14] He therefore prays that "in accordance with Rule 12 of the Rules of Court, plaintiff be directed to submit a more definite statement or a bill of particulars on the matters mentioned above which are not averred with sufficient definiteness or particularity." [15]

In its Comment, the plaintiff Republic of the Philippines opposed the motion. Replying to the opposition, petitioner cited *Tantuico vs. Republic* [16] which this Court decided on 2 December 1991.

In its Resolution promulgated on 4 August 1992, [17] the respondent Sandiganbayan (Second Division) partially granted the Motion for a Bill of Particulars. The dispositive portion thereof provides:

"WHEREFORE, premises considered, the instant 'Motion For Bill of Particulars', dated January 30, 1992, is hereby partially granted. Accordingly, plaintiff is hereby ordered to submit to the Court and furnish defendant-movant with a bill of particulars of the facts prayed for by the latter, pertaining to paragraph 17 (sic) and 18 of the Expanded Complaint, within fifteen (15) days from receipt hereof. Failure of plaintiff to do so would mean automatic deletion and/or exclusion of defendant-movant's name from the said paragraphs of the complaint, without prejudice to the standing valid effect of the other specific allegations against him." [18]

In granting the motion with respect to paragraphs 17 and 18 of the expanded Second Amended Complaint -- which it erroneously referred to as the Expanded Complaint -- the Sandiganbayan stated:

"In deference to the pronouncement made by the Highest Tribunal in *Tantuico*, We rule and so hold that the foregoing allegations need further amplifications and specifications insofar as defendant-movant is concerned in order for him to be able to properly meet the issue therein x x x." [19]

However, in denying amplification as to the rest of the allegations, the Sandiganbayan declared that:

"Albeit We are fully cognizant of the import and effect of the Supreme Court ruling in *Tantuico, Jr. vs. Republic, et. al.*, supra, however, We are not prepared to rule that the said case applies squarely to the case at bar to warrant an absolute ruling in defendant-movant's favor. The thrust of the ruling in said case, although possessing a semblance of relevance to the factual setting of the instant incident, does not absolutely support defendant-movant's stance. As implicitly admitted by defendant-movant, there are certain specific charges against him in the Expanded Complaint which are conspicuously absent in *Tantuico*, to wit: (i) his alleged 'active collaboration' in the reduction of the electric franchise tax from 5% to 2% of gross receipts and the tariff duty on fuel oil imports by all public utilities from 20% to 10%, which was effected through the enactment of Presidential Decree 551; (ii) his 'alleged collaboration' in securing the approval by defendant Marcos and his Cabinet of the 'Three-Year Program for the Extension of Meralco's Services to Areas Within the 60-Kilometer Radius of Manila'; and (iii) his alleged 'support, assistance and collaboration' in the formation of Erectors Holdings, Inc. (EHI).

We are of the considered opinion that the foregoing charges in the Expanded Complaint are clear, definite and specific enough to allow defendant-movant to prepare an intelligent responsive pleading or to prepare for trial. Considering the tenor of the Supreme Court ruling in *Tantuico*, the nature and composition of the foregoing factual allegations are, to Us, more than enough to meet the standards set forth therein in determining the sufficiency or relevancy of a bill of particulars. Alleging the specific nature, character, time and extent of the phrase 'active collaboration' would be a mere surplusage and would not serve any useful purpose, except to further delay the proceedings in the case. Corollarily, any question as to the validity or legality of the transactions involved in the charges against defendant-movant is irrelevant and immaterial in the resolution of the instant incident, inasmuch as the same is a matter of defense which shall have its proper place during the trial on the merits, and on they determination of the liability of defendant-movant after the trial proper. Furthermore, the

matters which defendant-movant seeks are evidentiary in nature and, being within his intimate or personal knowledge, may be denied or admitted by him or if deemed necessary, be the subject of other forms of discovery." [20]

In short, of the four (4) actionable wrongs enumerated in the Motion for a Bill of Particulars, the Sandiganbayan favorably acted only with respect to the fourth. [21]

Not satisfied with the partial grant of the motion, petitioner filed the instant petition under Rule 65 of the Revised Rules of Court contending that the Sandiganbayan acted with grave abuse of its discretion amounting to lack or excess of jurisdiction in not totally granting his Motion for a Bill of Particulars.

After thorough deliberations on the issues raised, this Court finds the petition to be impressed with merit. We therefore rule for the petitioner.

The Sandiganbayan's favorable application of *Tantuico vs. Republic of the Philippines* [22] with respect to the fourth "actionable wrong," or more particularly to paragraphs 17 and 18 of the expanded Second Amended Complaint in Civil Case No. 0035, and its refusal to apply the same to the first three (3) "actionable wrongs" simply because it is "not prepared to rule that the said case (*Tantuico*) applies squarely to the case at bar to warrant an absolute ruling in defendant-movant's favor," is quite contrived; the ratiocination offered in support of the rejection defeats the very purpose of a bill of particulars.

It is to be observed that *Tantuico vs. Republic of the Philippines* also originated from Civil Case No. 0035. *Tantuico*, herein petitioner's co-defendant in the said civil case, filed a motion for a bill of particulars to seek the amplification of the averments in paragraphs 2, 7, 9(a), 15 and 17 of the Second Amended Complaint. The Sandiganbayan denied the motion on the ground that the particulars sought are evidentiary in nature. [23] This Court eventually overruled the Sandiganbayan and forthwith directed the respondents therein to prepare and file a Bill of Particulars embodying the facts prayed for by *Tantuico*; this was based on Our finding that the questioned allegations in the complaint pertaining to *Tantuico* "are deficient because the averments therein are mere conclusions of law or presumptions, unsupported by factual premises." [24]

As in the earlier case of *Virata vs. Sandiganbayan*, We have carefully scrutinized the paragraphs of the expanded Second Amended Complaint subject of the petitioner's motion for a bill of particulars and find the same to be couched in general terms and wanting in definiteness or particularity. It is precisely for this reason that We indirectly suggested in the said decision that the petitioner's remedy is to file a motion for a bill of particulars and not a motion to dismiss. Thus, the basis of the distinction made by the respondent Sandiganbayan between the allegations in support of the first three (3) "actionable wrongs" and those in support of the fourth is as imperceptible as it is insignificant in the light of its admission that the ruling in *Tantuico* possesses "a semblance of relevance to the factual setting of the instant incident." As We see it, there exists not only a semblance but a striking similarity in the crafting of the allegations between the causes of action against *Tantuico* and those against the petitioner. And, as already stated, such allegations are general and suffer from a lack of definiteness and particularity. As a matter of fact, paragraphs 2, 7, 9 and 17 -- four of the five paragraphs of the complaint in Civil Case No. 0035 which was resolved in *Tantuico* -- are likewise involved in the instant case. *Tantuico's* applicability to the instant case is thus ineluctable and the propriety of the motion for a bill of particulars under Section 1, Rule 12 of the Revised Rules of Court is beyond dispute. Said section reads:

"SEC. 1. Motion for bill of particulars. -- Before responding to a pleading or, if no responsive pleading is permitted by these rules, within ten (10) days after service of the pleading upon him, a party may move for a more definite statement or for a bill of particulars of any matter which is not averred with sufficient definiteness or particularity to enable him properly to prepare his responsive pleading or to prepare for trial. Such motion shall

point out the defects complained of and the details desired."

As this Court enunciated in *Tan vs. Sandiganbayan*:^[25]

"It is the office or function, as well as the object or purpose, of a bill of particulars to amplify or limit a pleading, specify more minutely and particularly a claim or defense set up and pleaded in general terms, give information, not contained in the pleading, to the opposite party and the court as to the precise nature, character, scope, and extent of the cause of action or defense relied on by the pleader, and apprise the opposite party of the case which he has to meet, to the end that the proof at the trial may be limited to the matters specified, and in order that surprise at, and needless preparation for, the trial may be avoided, and that the opposite party may be aided in framing his answering pleading and preparing for trial. It has also been stated that it is the function or purpose of a bill of particulars to define, clarify, particularize, and limit or circumscribe the issues in the case, to expedite the trial, and assist the court. A general function or purpose of a bill of particulars is to prevent injustice or do justice in the case when that cannot be accomplished without the aid of such a bill.

It is not the office of a bill of particulars to supply material allegations necessary to the validity of a pleading, or to change a cause of action or defense stated in the pleading, or to state a cause of action or defense other than the one stated. Also it is not the office or function, or a proper object, of a bill of particulars to set forth the pleader's theory of his cause of action or a rule of evidence on which he intends to rely, or to furnish evidential information whether such information consists of evidence which the pleader proposes to introduce or of facts which constitute a defense or offset for the other party or which will enable the opposite party to establish an affirmative defense not yet pleaded."

The phrase "to enable him properly to prepare his responsive pleading x x x" in Section 1 of Rule 12 implies not just the opportunity to properly prepare a responsive pleading but also, and more importantly, to prepare an intelligent answer. Thus, in *Tan vs. Sandiganbayan*, this Court also said:

"The complaint for which a bill for a more definite statement is sought, need only inform the defendant of the essential (or ultimate) facts to enable him, the defendant, to prepare an intelligent answer x x x."^[26] (Emphasis supplied)

The proper preparation of an intelligent answer requires information as to the precise nature, character, scope and extent of the cause of action in order that the pleader may be able to squarely meet the issues raised, thereby circumscribing them within determined confines and preventing surprises during the trial, and in order that he may set forth his defenses which may not be so readily availed of if the allegations controverted are vague, indefinite, uncertain or are mere general conclusions. The latter task assumes added significance because defenses not pleaded (save those excepted in Section 2, Rule 9 of the Revised Rules of Court and, whenever appropriate, the defense of prescription)^[27] in a motion to dismiss or in the answer are deemed waived. It was, therefore, grave error for the *Sandiganbayan* to state that "[a]lleging the specific nature, character, time and extent of the phrase 'active collaboration' would be a mere surplusage and would not serve any useful purpose"^[28] for precisely, without any amplification or particularization thereof, the petitioner would be hard put in meeting the charges squarely and in pleading appropriate defenses. Nor can We accept the public respondent's postulation that "any question as to the validity or legality of the transactions involved in the charges against defendant-movant is irrelevant and immaterial in the resolution of the instant incident, inasmuch as the same is a matter of defense which shall have its proper place during the trial on the merits, and on the determination of the liability of defendant-movant after the trial proper."^[29] This is absurd, for how may the petitioner set up a defense at the time of trial if in his own answer he was not able to plead such a defense precisely because of the vagueness or indefiniteness of the allegations in the complaint? Unless he pleads the defense in his answer, he may be deprived

of the right to present the same during the trial because of his waiver thereof; of course, he may still do so if the adverse party fails to object thereto or if he is permitted to amend his answer pursuant to Section 3, Rule 10 of the Revised Rules of Court, but that is another thing.

We also find the Sandiganbayan's conclusion that "the matters which defendant-movant seeks are evidentiary in nature and, being within his intimate or personal knowledge, may be denied or admitted by him or if deemed necessary, be the subject of other forms of discovery,"[30] to be without basis as to the first aspect and gratuitous as to the second. The above disquisitions indubitably reveal that the matters sought to be averred with particularity are not evidentiary in nature. Since the issues have not as yet been joined and no evidence has so far been adduced by the parties, the Sandiganbayan was in no position to conclude that the matters which the petitioner seeks are "within his intimate or personal knowledge."

WHEREFORE, the instant petition is GRANTED. The Resolution of respondent Sandiganbayan of 4 August 1992, to the extent that it denied the motion for a bill of particulars with respect to the so-called first three (3) "actionable wrongs," is SET ASIDE but affirmed as to the rest. Accordingly, in addition to the specific bill of particulars therein granted, respondent Republic of the Philippines, as plaintiff in Civil Case No. 0035 before the Sandiganbayan, is hereby ordered to submit to the defendant (herein petitioner) in the said case, within thirty (30) days from receipt of a copy of this Decision, a bill of particulars containing the facts prayed for by the latter insofar as the first three (3) "actionable wrongs" are concerned.

No pronouncement as to costs.

SO ORDERED.

Cruz, Padilla, Bidin, Griño-Aquino, Regalado, Nocon, Bellosillo, Melo, Campos, Jr., and Quiason, JJ., concur.
Feliciano, J., in the result.
Narvasa, C.J. and Romero, J., no part.

[1] G.R. No. 86926.

[2] G.R. No. 86949.

[3] 202 SCRA 680 [1991].

[4] Annex "B" of Petition; Rollo, 38-78. The complaint is for the recovery of ill-gotten wealth and is denominated as one for reconveyance, reversion, accounting, restitution and damages.

[5] Annex "D", Id.; Id., 127-174.

[6] Pp. 693-695; entries within parentheses appear as footnotes in the decision.

[7] Rollo, 9.

[8] Id.

[9] Annex "E" of Petition; Id., 175-182.

[10] Rollo, 175-177.

[11] Rollo, 177.

[12] Rollo, 177-180.

[13] Rollo, 180-181.

[14] Rollo, 181.

[15] Id.

[16] 204 SCRA 428 [1991].

[17] Annex "A" of Petition; Rollo, op, cit., 24-37.

[18] Id., 36-37.

[19] Rollo, 34-35.

[20] Rollo, 32-34.

[21] Id., 14.

[22] Supra.

[23] Supra., at page 435.

[24] Supra., at page 448.

[25] 180 SCRA 34, 42-43 [1989], quoting 71 C.J.S. 376, cited in *Tantuico vs. Republic*, supra.

[26] Supra., at page 43, omitting footnote.

[27] *Philippine National Bank vs. Pacific Commission House*, 27 SCRA 766 [1969]; *Garcia vs. Mathis*, 100 SCRA 250 [1980]; *Gulang vs. Nadayag*, G.R. No. 82630, 30 September 1992.

[28] Supra, footnote no. 20.

[29] Id.

[30] Supra, footnote no. 20.

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