PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT AND MAGTANGGOL C. GUNIGUNDO, IN HIS CAPACITY AS CHAIRMAN THEREOF, PETITIONERS, VS. SANDIGANBAYAN AND OFFICECO HOLDINGS, N.V., RESPONDE...

G.R. No. 124772. August 14, 2007

Ponente: TINGA, J.

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TINGA, J.:

Before this Court is a Petition for Certiorari and Prohibition with Prayer for Issuance of a Temporary Restraining Order filed by the Presidential Commission on Good Government (PCGG) to restrain and enjoin respondent Sandiganbayan from further proceeding with Civil Case No. 0164, and to declare null and void the Resolutions of the Sandiganbayan (Second Division) dated 11 January 1996 and 29 March 1996, which denied PCGG's motion to dismiss and motion for reconsideration, respectively, in Civil Case No. 0164.

The antecedent facts follow.

On 7 April 1986, in connection with criminal proceedings initiated in the Philippines to locate, sequester and seek restitution of alleged ill-gotten wealth amassed by the Marcoses and other accused from the Philippine Government,[1] the Office of the Solicitor General (OSG) wrote the Federal Office for Police Matters in Berne, Switzerland, requesting assistance for the latter office to: (a) ascertain and provide the OSG with information as to where and in which cantons the ill-gotten fortune of the Marcoses and other accused are located, the names of the depositors and the banks and the amounts involved; and (b) take necessary precautionary measures, such as sequestration, to freeze the assets in order to preserve their existing value and prevent any further transfer thereof (herein referred to as the IMAC request).[2]

On 29 May 1986, the Office of the District Attorney in Zurich, pursuant to the OSG's request, issued an Order directing the Swiss Banks in Zurich to freeze the accounts of the accused in PCGG I.S. No. 1 and in the "List of Companies and Foundations."[3] In compliance with said Order, Bankers Trust A.G. (BTAG) of Zurich froze the accounts of Officeco Holdings, N.V. (Officeco).[4]

Officeco appealed the Order of the District Attorney to the Attorney General of the Canton of Zurich. The Attorney General affirmed the Order of the District Attorney.[5] Officeco further appealed to the Swiss Federal Court which likewise dismissed the appeal on 31 May 1989.[6]

Thereafter, in late 1992, Officeco made representations with the OSG and the PCGG for them to officially advise the Swiss Federal Office for Police Matters to unfreeze Officeco's assets.[7] The PCGG required Officeco to present countervailing evidence to support its request.

Instead of complying with the PCGG requirement for it to submit countervailing evidence, on 12 September 1994, Officeco filed the complaint[8] which was docketed as Civil Case No. 0164 of the Sandiganbayan. The complaint prayed for the PCGG and the OSG to officially advise the Swiss government to exclude from the freeze or

sequestration order the account of Officeco with BTAG and to unconditionally release the said account to Officeco.

The OSG filed a joint answer[9] on 24 November 1994 in behalf of all the defendants in Civil Case No. 0164.[10] On 12 May 1995, the PCGG itself filed a motion to dismiss[11] which was denied by the Sandiganbayan (Third Division) in its Resolution promulgated on 11 January 1996.[12] PCGG's motion for reconsideration was likewise denied in another Resolution dated 29 March 1996.[13] Hence, this petition.

On 20 May 1996, the Sandiganbayan issued an order in Civil Case No. 0164 canceling the pre-trial scheduled on said date in deference to whatever action the Court may take on this petition.[14]

The issues raised by the PCGG in its Memorandum[15] may be summarized as follows: whether the Sandiganbayan erred in not dismissing Civil Case No. 0164 on the grounds of (1) res judicata; (2) lack of jurisdiction on account of the "act of state doctrine"; (3) lack of cause of action for being premature for failure to exhaust administrative remedies; and (4) lack of cause of action for the reason that mandamus does not lie to compel performance of a discretionary act, there being no showing of grave abuse of discretion on the part of petitioners.

According to petitioners, the 31 May 1989 Decision of the Swiss Federal Court denying Officeco's appeal from the 29 May 1986 and 16 August 1988 freeze orders of the Zurich District Attorney and the Attorney General of the Canton of Zurich, respectively, is conclusive upon Officeco's claims or demands for the release of the subject deposit accounts with BTAG. Thus, a relitigation of the same claims or demands cannot be done without violating the doctrine of res judicata or conclusiveness of judgment.[16]

Next, petitioners claim that Civil Case No. 0164 in effect seeks a judicial review of the legality or illegality of the acts of the Swiss government since the Sandiganbayan would inevitably examine and review the freeze orders of Swiss officials in resolving the case. This would be in violation of the "act of state" doctrine which states that courts of one country will not sit in judgment on the acts of the government of another in due deference to the independence of sovereignty of every sovereign state.[17]

Furthermore, if the Sandiganbayan allowed the complaint in Civil Case No. 0164 to prosper, this would place the Philippine government in an uncompromising position as it would be constrained to take a position contrary to that contained in the IMAC request.

Petitioners allege that Officeco failed to exhaust the administrative remedies available under Secs. 5 and 6 of the PCGG Rules and Regulations Implementing Executive Orders No. 1 and No. 2. This failure, according to petitioners, stripped Officeco of a cause of action thereby warranting the dismissal of the complaint before the Sandiganbayan.

Petitioners further contend that the complaint before the Sandiganbayan is actually one for mandamus but the act sought by Officeco is discretionary in nature. Petitioners add that they did not commit grave abuse of discretion in denying Officeco's request to unfreeze its account with BTAG since the denial was based on Officeco's failure to present countervailing evidence to support its claim. The action for mandamus does not lie, petitioners conclude.

In its comment,[18] Officeco questions the competence of the PCGG lawyers to appear in the case since they are not properly authorized by the OSG to represent the Philippine government and/or the PCGG in ill-gotten wealth cases such as the one in the case at bar. However, this issue has been rendered moot by an agreement by and among the PCGG Chairman, the Solicitor General, the Chief Presidential Legal Counsel, and the Secretary of Justice that the PCGG lawyers would enter their appearance as counsel of PCGG or the Republic and shall directly attend to the various cases of the PCGG, by virtue of their deputization as active counsel.[19]

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Furthermore, the Memorandum in this case which was prepared by the OSG reiterated the arguments in support of the petition which was initially filed by PCGG.

Nevertheless, the petition is bereft of merit. We find that the Sandiganbayan did not act with grave abuse of discretion in denying petitioners' motion to dismiss.

Res judicata

Res judicata means a matter adjudged, a thing judicially acted upon or decided; a thing or matter settled by judgment.[20] The doctrine of res judicata provides that a final judgment on the merits rendered by a court of competent jurisdiction is conclusive as to the rights of the parties and their privies and constitutes an absolute bar to subsequent actions involving the same claim, demand, or cause of action.[21]

For the preclusive effect of res judicata to be enforced, the following requisites must obtain: (1) The former judgment or order must be final; (2) It must be a judgment or order on the merits, that is, it was rendered after a consideration of the evidence or stipulations submitted by the parties at the trial of the case; (3) It must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) There must be, between the first and second actions, identity of parties, of subject matter and of cause of action. This requisite is satisfied if the two actions are substantially between the same parties.[22]

While the first three elements above are present in this case, we rule that the fourth element is absent. Hence, res judicata does not apply to prevent the Sandiganbayan from proceeding with Civil Case No. 0164.

Absolute identity of parties is not a condition sine qua non for res judicata to apply, a shared identity of interest being sufficient to invoke the coverage of the principle.[23] In this regard, petitioners claim that while "the Philippine government was not an impleaded party respondent in Switzerland," it is undisputed that "the interest of the Philippine government is identical to the interest of the Swiss officials," harping on the fact that the Swiss officials issued the freeze order on the basis of the IMAC request.[24] However, we fail to see how petitioners can even claim an interest identical to that of the courts of Switzerland. Petitioners' interest, as reflected in their legal mandate, is to recover ill-gotten wealth, wherever the same may be located.[25] The interest of the Swiss court, on the other hand, is only to settle the issues raised before it, which include the propriety of the legal assistance extended by the Swiss authorities to the Philippine government.

Secondly, a subject matter is the item with respect to which the controversy has arisen, or concerning which the wrong has been done, and it is ordinarily the right, the thing, or the contract under dispute.[26] In the case at bar, the subject matter in the Swiss Federal Court was described in the 31 May 1989 decision itself as "ruling on temporary measures (freezing of accounts) and of taking of evidence (gathering bank information)."[27] It was thus concerned with determining (1) whether "there is a reason of exclusion as defined in Art. 2 lit. b and [Art.] 3 par. 1 IRSG[28] or an applicable case of Art. 10 Par. 2 IRSG;" [29] (2) whether legal assistance should be refused on the basis of Art. 2 lit. a IRSG;[30] (3) whether Officeco should be regarded as a disinterested party owing to the fact that its name was not included in the list accompanying the IMAC request as well as in the order of the District Attorney of Zurich; and (4) whether the grant of legal assistance is proper considering the actions of Gapud.[31] In short, the subject matter before the Swiss courts was the propriety of the legal assistance extended to the Philippine government. On the other hand, the issue in Civil Case No. 0164 is whether the PCGG may be compelled to officially advise the Swiss government to exclude or drop from the freeze or sequestration order the account of Officeco with BTAG and to release the said account to Officeco. In short, the subject matter in Civil Case No. 0164 is the propriety of PCGG's stance regarding Officeco's account with BTAG.

In arguing that there is identity of causes of action, petitioners claim that "the proofs required to sustain a

judgment for [Officeco] in Switzerland is no different from the proofs that it would offer in the Philippines." We disagree.

A cause of action is an act or omission of one party in violation of the legal right of the other.[32] Causes of action are identical when there is an identity in the facts essential to the maintenance of the two actions, or where the same evidence will sustain both actions.[33] The test often used in determining whether causes of action are identical is to ascertain whether the same facts or evidence would support and establish the former and present causes of action.[34] More significantly, there is identity of causes of action when the judgment sought will be inconsistent with the prior judgment.[35] In the case at bar, allowing Civil Case No. 0164 to proceed to its logical conclusion will not result in any inconsistency with the 31 May 1989 decision of the Swiss Federal Court. Even if the Sandiganbayan finds for Officeco, the same will not automatically result in the lifting of the questioned freeze orders. It will merely serve as a basis for requiring the PCGG (through the OSG) to make the appropriate representations with the Swiss government agencies concerned.

Act of State Doctrine

The classic American statement of the act of state doctrine, which appears to have taken root in England as early as 1674,[36] and began to emerge in American jurisprudence in the late eighteenth and early nineteenth centuries, is found in Underhill v. Hernandez,[37] where Chief Justice Fuller said for a unanimous Court:

> Every sovereign state is bound to respect the independence of every other state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves.[38]

The act of state doctrine is one of the methods by which States prevent their national courts from deciding disputes which relate to the internal affairs of another State, the other two being immunity and non-justiciability.[39] It is an avoidance technique that is directly related to a State's obligation to respect the independence and equality of other States by not requiring them to submit to adjudication in a national court or to settlement of their disputes without their consent.[40] It requires the forum court to exercise restraint in the adjudication of disputes relating to legislative or other governmental acts which a foreign State has performed within its territorial limits.[41]

It is petitioners' contention that the Sandiganbayan "could not grant or deny the prayers in [Officeco's] complaint without first examining and scrutinizing the freeze order of the Swiss officials in the light of the evidence, which however is in the possession of said officials" and that it would therefore "sit in judgment on the acts of the government of another country."[42] We disagree.

The parameters of the use of the act of state doctrine were clarified in Banco Nacional de Cuba v. Sabbatino.[43] There, the U.S. Supreme Court held that international law does not require the application of this doctrine nor does it forbid the application of the rule even if it is claimed that the act of state in question violated international law. Moreover, due to the doctrine's peculiar nation-to-nation character, in practice the usual method for an individual to seek relief is to exhaust local remedies and then repair to the executive authorities of his own state to persuade them to champion his claim in diplomacy or before an international tribunal.[44]

Even assuming that international law requires the application of the act of state doctrine, it bears stressing that the Sandiganbayan will not examine and review the freeze orders of the concerned Swiss officials in Civil Case No. 0164. The Sandiganbayan will not require the Swiss officials to submit to its adjudication nor will it settle a dispute involving said officials. In fact, as prayed for in the complaint, the Sandiganbayan will only review and

examine the propriety of maintaining PCGG's position with respect to Officeco's accounts with BTAG for the purpose of further determining the propriety of issuing a writ against the PCGG and the OSG. Everything considered, the act of state doctrine finds no application in this case and petitioners' resort to it is utterly mislaid.

Exhaustion of Administrative Remedies

Petitioners advert to Officeco's failure to exhaust the administrative remedies provided in Secs. 5 and 6 of the PCGG Rules and Regulations Implementing Executive Orders No. 1 and No. 2.[45] However, a reading of said provisions shows that they refer only to sequestration orders, freeze orders and hold orders issued by the PCGG in the Philippines. They cannot be made to apply to the freeze orders involved in this case which were issued by the government of another country.

It was thus error for petitioners to treat Officeco's request for the lifting of the freeze orders as a request under Secs. 5 and 6 of its rules. First, the PCGG cannot even grant the remedy embodied in the said rules, i.e., lifting of the freeze orders. Second, any argument towards a conclusion that PCGG can grant the remedy of lifting the freeze order is totally inconsistent with its earlier argument using the act of state doctrine. PCGG's cognizance of such a request and treating it as a request under Secs. 5 and 6 of its rules would require a re-examination or review of the decision of the Swiss court, a procedure that is prohibited by the act of state doctrine.

Complaint States a Cause of Action

While the stated issue is whether mandamus lies, the real crux of the matter is whether Officeco's complaint before the Sandiganbayan states a cause of action. We uphold the sufficiency of the complaint.

It may be recalled that Officeco had alleged that it had sent several letters to the PCGG and the OSG for these bodies to advise the Swiss authorities to drop or exclude Officeco's account with BTAG from the freeze or sequestration, but no formal response was received by petitioners on these letters. Copies of at least four (4) of these letters were in fact attached as annexes to the complaint.[46]

Section 5(a) of Republic Act No. 6713, or the Code of Conduct and Ethical Standards for Public Officials and Employees, states:

> Section 5. Duties of Public Officials and Employees. In the performance of their duties, all public officials and employees are under obligation to:
>
> (a) Act promptly on letters and requests. All public officials and employees shall, within fifteen (15) working days from receipt thereof, respond to letters, telegrams or other means of communications sent by the public. The reply must contain the action taken on the request. [Emphasis supplied.]

Since neither the PCGG nor the OSG replied to the requests of Officeco within fifteen (15) days as required by law, such inaction is equivalent to a denial of these requests. As such, no other recourse was left except for judicial relief. The appreciation of the allegations in the complaint from this standpoint allows us to see how the cause of action precisely materialized. Even if these allegations were not cast in the framework of a mandamus action, they still would give rise to a viable cause of action, subject to the proof of the allegations during trial.

A motion to dismiss on the ground of failure to state a cause of action in the complaint hypothetically admits the truth of the facts alleged therein. The hypothetical admission extends to the relevant and material facts well pleaded in the complaint and inferences fairly deducible therefrom. Hence, if the allegations in the complaint furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed regardless of the defense that may be assessed by the defendants.[47]

The following allegations culled from Officeco's complaint in the Sandiganbayan would, if proven, entitle

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Officeco to the main reliefs sought in its complaint in view of petitioners' refusal to exclude Officeco's account with BTAG in the list of ill-gotten wealth, to wit: (1) The freeze order has been in effect for eleven (11) years, since 1986, without any judicial action instituted by the PCGG and the OSG against Officeco; (2) The PCGG and the OSG have no document or proof that the account of Officeco with BTAG belongs to the Marcoses nor their cronies. Information on this matter was even requested by the OSG from the PCGG and the latter from Swiss authorities who, up to the present, have not responded positively on the request;[48] and (3) Requests[49] by Officeco to the PCGG and OSG to make representations with the Swiss authorities for the latter to release Officeco's account with the BTAG from the freeze order remain unacted upon despite the mandate in Section 5(a) of Republic Act No. 6713.

The truth of the above allegations, which must be deemed hypothetically admitted for the purpose of considering the motion to dismiss, may properly be determined only if Civil Case No. 0164 is allowed to proceed, such that if they are found to be supported by preponderance of evidence, adverse findings may properly be made against PCGG and the corresponding reliefs granted in favor of Officeco.

Furthermore, Officeco claims that on two separate occasions, upon request of counsel for Security Bank and Trust Company (SBTC), the PCGG and the OSG formally advised the Swiss authorities to release from the freeze orders two other securities accounts with BTAG. Because of these representations, the release of the two accounts from the freeze order was effected. Gapud also assisted in the establishment and administration of these accounts with BTAG.[50] According to Officeco, the continuous refusal of the PCGG and the OSG to act favorably on its request while acting favorably on the above two requests of SBTC is a clear violation of its right to equal protection under the 1987 Constitution.[51]

The guarantee of equal protection, according to Tolentino v. Board of Accountancy, et al.,[52] simply means "that no person or class of persons shall be deprived of the said protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances."[53] Indeed, if it were true that the PCGG and the OSG facilitated the release of two deposit accounts upon the request of SBTC and these accounts are similarly situated to Officeco's frozen account with BTAG, the operation of the equal protection clause of the Constitution dictates that Officeco's account should likewise be ordered released. Again, this matter can properly be resolved if Civil Case No. 0164 is allowed to proceed.

WHEREFORE, premises considered, the instant petition is DISMISSED.

No pronouncement as to costs.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Velasco, Jr., concur.

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[1]The names of the accused as listed in the caption of PCGG I.S. No. 1 are as follows: Ferdinand E. Marcos, Imelda R. Marcos, Imelda Marcos Manotoc (Imee), Tomas Manotoc, Irene Marcos Araneta, Gregorio Araneta III, Ferdinand R. Marcos, Jr., Baltazar Aquino, Roberto S. Benedicto, Edna Camcam, Jose Y. Campos, Eduardo Cojuangco, Roman Cruz, Jr., Rodolfo Cuenca, Herminio Disini, Antonio Floirendo, Andres Genito, Jr., Rolando Gapud, Fe Roa Gimenez, Peter Sabido, Ricardo Silverio, Lucio Tan, Bienvenido Tantoco, Gliceria Tantoco, Geronimo Velasco, Fabian Ver, John Doe, Jane Doe, and others. Records, Vol. I, p. 22.

[2] Rollo, pp. 62-64.

[3] No such list can be found in the records of the case.

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[4] It appearing that Rolando Gapud, one of the accused in PCGG I.S. No. 1, as President of Security Bank and Trust Company, assisted Officeco in the opening and administration of which Officeco's account with BTAG.

[5] Based on its finding, the two limited companies, Curacao Corporation Company NV and Netherlands Antilles Corporation Company NV, who were the incorporators of Officeco, were also the incorporators of Unique Investment NV and Goodland Investment NV, companies organized by Jose Yao Campos on instructions of former President Ferdinand E. Marcos as a conduit of ill-gotten funds. Campos allegedly turned over the management of the latter two companies to Gapud.

[6] Rollo, pp. 77-86.

[7] These requests were contained in various letters written by Officeco's counsel.

[8] Rollo, pp. 103-117.

[9] Records, Vol. I, pp. 97-104.

[10] The defendants were the following: Raul I. Goco, in his capacity as Solicitor General, the Presidential Commission on Good Government (PCGG), and Magtanggol C. Gunigundo, in his capacity as PCGG Chairman.

[11] Rollo, pp. 127-152.

[12] Id. at 43-52. It does not escape our attention that the fact that the PCGG filed a Motion to Dismiss even after the OSG had already filed an answer in its behalf is highly irregular. Motions to dismiss are to be filed within the time for but before filing the answer to the pleading asserting a claim (see Rules oF Court, Rule 16, Sec. 1) and the Sandiganbayan could have certainly denied the Motion to Dismiss on that ground. This point bears less relevance to this case only because that ground was not cited by the Sandiganbayan when it denied the Motion to Dismiss.

Still, the record also indicates a disconcerting lack of harmony between the OSG and the PCGG in the litigation of this petition. It was the PCGG itself, through its own counsels, which had filed the petition before this Court without any manifest conformity on the part of the OSG. In fact, there was an extended dispute on this point among the parties. While the OSG later manifested that it had deputized the PCGG lawyers to appear in this case, the Memorandum for petitioners was filed by the OSG itself.

[13] Id. at 53-61; Penned by then Court of Appeals Associate Justice (now retired Supreme Court Justice) Sabino R. De Leon, Jr. and concurred in by Associate Justices Cipriano A. Del Rosario (Chairperson) and Roberto M. Lagman.

[14] Records, Vol. IV, p. 1025.

[15] Rollo, pp. 1114-1153.

[16] Citing General Corporation of the Philippines v. Union Insurance Society of Canton, Ltd., 87 Phil. 313 (1950).

[17] Citing Underhill v. Hernandez, 168 U.S. 250.

[18] Rollo, pp. 164-219.

[19] Id. at 680-681, 700-702.

[20] Lanuza v. Court of Appeals, G.R. No. 131394, 28 March 2005, 454 SCRA 54, 61, citing Manila Electric Company v. Philippine Consumers Foundation, Inc., 425 Phil. 65, 78 (2002), citing 46 Am Jur. § 514.

[21] Id., citing Republic v. Court of Appeals, 381 Phil. 558, 564 (2000).

[22] Escareal v. Philippine Airlines, Inc., G.R. No. 151922, 7 April 2007, citing FERIA & NOCHE, CIVIL PROCEDURE ANNOTATED , Vol. II (2001 ed.), p. 134.

[23] Lanuza v. Court of Appeals, supra note 20, at 62, citing Cruz v. Court of Appeals, 388 Phil. 550, 556 (2000).

[24] Rollo, p. 20.

[25] Executive Order No. 2 (signed by former President Corazon C. Aquino on 12 March 1987) authorized the PCGG "to request and appeal to foreign governments wherein any such assets or properties may be found to freeze them and otherwise present their transfer, conveyance, encumbrance, concealment or liquidation by former President Ferdinand E. Marcos and Mrs. Imelda Romualdez Marcos, their relatives, subordinates, business associates, dummies, agents or nominees, pending the outcome of appropriate proceedings in the Philippines to determine whether such assets or properties were acquired by such persons through improper or illegal use of funds belonging to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks, or financial institutions or by taking undue advantage of their office, authority, influence, connections or relationship."

[26] Escareal v. Philippine Airlines, Inc., supra note 22, citing Yusingco v. Ong Hing Lian, 149 Phil. 688, 705.

[27] Rollo, p. 82.

[28] Under this provision, a request for legal assistance is not to be complied with if the object of the proceedings is an act which, according to Swiss interpretation, has a predominantly political character.

[29] Under this provision, the divulgence of facts is inadmissible if it means considerable disadvantage to Swiss economy and this would not be expected in consideration of the significance of the deed.

[30] Under this provision, the procedure is refused when there are grounds for the assumption that the proceedings abroad do not correspond to the principles established in the European Human Rights Convention.

[31] Rollo, pp. 82-84. A legal requirement for legal assistance is that the actions of the individual accused must be punishable either under Philippine law or Swiss law.

[32] Escareal v. Philippine Airlines, Inc., supra note 22, citing Section 2, Rule 2, 1997 Rules of Civil Procedure.

[33] Id., citing Stilanopolus v. City of Legaspi, G.R. No. 113913, 12 October 1999, 316 SCRA 523, 541.

[34] Lanuza v. Court of Appeals, supra note 20, at 62, citing Cagayan de Oro Coliseum Inc. v. Court of Appeals, 378 Phil. 498, 520 (1999).

[35] Id., citing Cruz v. Court of Appeals, 388 Phil. 550, 556 (2000).

[36] Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 84 S.Ct. 923 (1964), citing Blad v. Bamfield, 3 Swans. 604, 36 Eng.Rep. 992.

[37] 168 U.S. 250, 18 S.Ct. 83, 42 L.Ed. 456 (1897).

[38] Banco Nacional de Cuba v. Sabbatino, supra note 36, citing Underhill v. Hernandes, 168 U.S. 250, 252; 18 S.Ct. 83, 84 (1897).

[39] Evans, M.d. (Ed.), International Law (First Edition), Oxford University Press, p. 357.

[40] Id. at 358.

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[41] Id.

[42] Rollo, p. 25.

[43] 376 U.S. 398; 84 S. Ct. 923 (1964).

[44] Id.

[45] Secs. 5 and 6 of the Rules read:

Section 5. Who may contest. - The person against whom a writ of sequestration or freeze or hold order is directed may request the lifting thereof in writing, either personally or through counsel within five (5) days from receipt of the writ of order, or in the case of a hold order, from date of knowledge thereof.

Section 6. Procedure for review of writ of order. - After due hearing or motu proprio for good cause shown, the Commission may lift the writ or order unconditionally or subject to such conditions as it may deem necessary, taking into consideration the evidence and the circumstances of the case. The resolution of the Commission may be appealed by the party concerned to the Office of the President of the Philippines within fifteen (15) days from receipt thereof.

[46] See rollo, p. 112.

[47] See., e.g., Ceroferr Realty v. Court of Appeals, 426 Phil. 522, 529 (2002).

[48] Officeco points to the following communications as evidence of this fact: (1) Letter dated 19 April 1989 of Ceasar Parlade of the PCGG addressed to Dr. Sergio Salvoni (Records, Vol. I, p. 27); (2) Letter dated 3 November 1992 of Atty. Simeon M. Mesina, Jr. addressed to the PCGG Chairman (Id. at p. 28); (3) Letter dated 27 July 1993 of ASG Cesario L. Del Rosario addressed to Officeco's counsel (Id. at 29-30); (4) Letter dated 7 September 1992 of PCGG Chairman addressed to Officeco's counsel (Id. at 31); (5) Letter of PCGG Chairman addressed to Mr. Peter Cosandey dated 12 March 1993 (Id. at 2); (6) Letter of ASG Del Rosario to Mr. Peter Cosandey dated 15 July 1992; and (7) Letter dated 24 July 1992 of ASG Del Rosario to the OSG (Id. at 34-36).

[49] The requests were made by Officeco's counsel through letters dated 1 September 1992 (Id. at 50-52), 10 December 1992 (Id. at 53-55), 3 February 1993 (Id. at 56-62), 24 July 1992 (Id. at 63-64), 25 June 1993 (Id. at 65-70), and 23 July 1993 (Id. at 71-72).

[50] These are the deposit accounts of Bunratty Enterprises Ltd. worth US$15,000,000.00 and a CB Note worth US$2,598,586.00

[51] Sec. 1, Article II of the 1987 Constitution provides: "No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws."

[52] 90 Phil. 83, 90 (1951).

[53] Cited in J.G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY (2003 Ed.), p. 137.

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