VIVIAN Y. LOCSIN, YAO SHIONG SHIO, OSCAR MANUEL, RAMON LINAN, PAZ Y. FLORES, FOR AND ON THEIR OWN BEHALF, AND SIXTO O. RACELIS, FOR AND ON BEHALF OF ORIENTAL PETROLEUM AND MINER...

G.R. NO. 134458. August 09, 2007

Ponente: VELASCO, JR., J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-134458/

VELASCO, JR., J.:

The Case

Before us is a petition[1] of a special civil action for certiorari under Rule 65 imputing grave abuse of discretion on the Sandiganbayan (SB) First Division when it denied, through its March 21, 1990 Resolution,[2] admission of petitioners' Amended Complaint[3] in S.B. Case No. 0042 in connection with their quest to recover shares of Oriental Petroleum and Minerals Corporation (Oriental) from alleged dummies and nominees of former President Ferdinand E. Marcos. Likewise challenged is the May 12, 1998 Order[4] which turned down petitioners' Motion for Reconsideration.

The Facts

Individual petitioners are stockholders of petitioner Oriental.Oriental is engaged in the exploration, development, acquisition, financing, and management of petroleum and mineral resources. Of note, it gave the Philippines its first oil discovery in 1976. It was organized on October 10, 1969, and had PhP 10 billion common shares which were divided into two classes with the same rights and privileges, viz: (1) six billion Class "A" common shares to be issued only to Filipino citizens and (2) four billion Class "B" common shares which may be issued to aliens.

On May 5, 1988, petitioners Yao Shiong Shio, Oscar Manuel, and Ramon Linan filed a Complaint[5] docketed as Civil Case S.B. No. 0041 for Declaration of Nullity of Presidential Commission on Good Government (PCGG) Deed of Sale, Sequestration Orders, Prayer for Issuance of Temporary Restraining Order and/or Preliminary Injunction and Appointment of Receiver, with Damages against most of the respondents. The case was raffled to the SB First Division.

On May 25, 1988, the SB issued a Resolution[6] denying petitioners' plea for an injunctive writ.

On July 6, 1988, petitioners filed an amended complaint.

On July 27, 1988, a Notice of Dismissal was filed of both the original and amended complaints which were approved by the SB First Division on July 28, 1988.

On July 28, 1988, petitioners filed anew a complaint with the SB which was identical to the amended complaint in S.B. No. 0041. The second case was docketed as S.B. No. 0042 and was raffled to the Third Division. This complaint now impleads petitioners Locsin, et al. as additional plaintiffs and respondents as additional defendants. Two original defendants in S.B. No. 0041, namely: Ramon Garcia of the PCGG and Ramon Garcia of the Asset

Privatization Trust (APT), were excluded in S.B. No. 0042, while PCGG and APT remained as party-defendants.

On the other hand, respondents corporations were those wherein the shares allegedly illegally obtained by former President Marcos were placed, and from which the disputed shares were taken or sequestered by respondent PCGG. In addition, the Rizal Commercial Banking Corporation was impleaded in its capacity as the transfer agent of Oriental through which the disputed shares would be transferred to respondents corporations and which petitioners sought to enjoin through the prayed for injunctive writ.

On August 24, 1988, the SB Third Division issued a Resolution taking into account the alleged forum shopping of petitioners within the SB divisions and the similarity of the new complaint with the original and amended complaint in Civil Case S.B. No. 0041 in violation of the SB Circular No. 7.

The SB Third Division explicated its August 24, 1988 Resolution, thus:

> The issue was precipitated by the manifestation of the defendants that the filing of this case smacks of "forum-shopping" within the divisions of this court as the complaint is practically a repetition of the allegation in the complaint in Civil Case No. 0041;
>
> The records of said Civil Case No. 0041 show that after the First Division denied the plaintiffs' prayer for preliminary injunction/restraining order in its resolution of May 23, 1988, plaintiffs through another panel of lawyers, filed an amended complaint dated July 6, 1988, but later filed a Notice of Dismissal of both the original and amended complaints of July 27, 1988. The First Division approved the dismissal on July 29, 1988 in the same day herein plaintiffs filed the complaint in this Case No. 0042;
>
> Petitioners do not deny that the complaint in Civil Case No. 0042 is a substantial petition/consolidation of the allegations and prayer in the original and amended complaint in Civil Case No. 0041. They nevertheless maintain that the assignment of this case to the Third Division as a result of a raffle conducted by the Sandiganbayan is final and conclusive.

Pursuant to the August 24, 1988 Resolution, the complaint was tossed back to the SB First Division.

Petitioners' Complaint,[7] docketed as Civil Case S.B. No. 0042, alleged that Oriental and its stockholders were victims of former president Marcos and his cronies who acquired three blocks of Oriental stocks at various times either without or for inadequate or unlawful considerations, as summarized by the Sandiganbayan, to wit:

> - In 1970, One (1) Billion Class "B" Shares
>
> One Billion class "B" shares (intended to be sold in New York to foreigners) originally transferred to Star Management Corporation (allegedly controlled by Vincent Recto) upon instructions of Pres. Marcos through a Bill of Sale executed by the underwriter of J.M. Barcelon & Co.
>
> Consideration: allegedly none, except for a fictitious downpayment of P100,000.00 or 1% (while other subscribers allegedly paid 25%) of the total subscription price - fictitious because the money supposedly came from ORIENTAL PETROLEUM itself.
>
> Of these, 1 million shares were allegedly sold by STAR MANAGEMENT in 1971, while the remaining 999 million shares were transferred by STAR MANAGEMENT to ULTRANA upon instruction of ex-Pres. Marcos. The original subscription contract of ORIENTAL with STAR MANAGEMENT was cancelled and a new one entered with ULTRANA at no consideration to ORIENTAL.
>
> In the first week of March 1976, 800 million shares were transferred by ULTRANA to the Independent Realty Corporation and 199 million shares to Vincent Recto.
>
> As of the filing of this suit, the remaining balance subject of the instant suit stands at 162 million shares with

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

Independent Realty Corporation.

- In 1976, 1.85 Billion Class "B" Shares

These were allegedly acquired by ex-Pres. Marcos through simulated transactions and were distributed upon his instruction as follows:

1.000 Billion

: Performance Investment Corp.

840 Million

: Mid-Pasig Development Corp.

10 Million

: Fabian Ver

1.850 Billion

TOTAL

at a subscription price at P0.01 per share with downpayment at 25% of total value, even if the price at the stock market was averaging at P0.10 per share.

- In 1978, 2.5 Billion Shares

These were allegedly issued after ORIENTAL had been forced by Marcos to increase its authorized capital stock, supposedly in exchange for 2.5% interest in the Service Contract over the Nido and the Matinloc Oil Mills (Service Contract No. 14). These shares were later found to have been put in the name of Piedras Petroleum Corporation.[8]

The 2.5 billion shares issued to Piedras Petroleum Corporation (Piedras) consisted of PhP 1.5 billion Class "A" shares and 1 billion Class "B" shares.

Due to subsequent sales and transfers, as of April 1986, only around 4.5 billion shares remained in the names of the alleged Marcos cronies, which are now the disputed shares, to wit:

Independent Realty Corp. - 162,230,000 shares

Performance Investment Corp. - 1,000,000,000

Mid-Pasig Development Corp. - 840,000,000

Fabian Ver - 10,000,000

Piedras - 2,500,000,000

Total - 4,512,230,000 shares

Through an April 10, 1986 Sequestration Order,[9] the PCGG sequestered all the above shares except those of Piedras which was done a few days later through a second Sequestration Order[10] dated April 14, 1986.

With the sequestration of the disputed shares, petitioners further alleged that PCGG took control of the Board of Directors and the management of Oriental. They averred that the PCGG nominees, individual respondents except Fabian Ver, set into motion a grand scheme to raid and systematically plunder Oriental. Petitioners proceeded to outline the alleged acts committed by the PCGG nominees using fraud and deceit to enrich themselves at the

expense of Oriental.

After the SB First Division received Civil Case S.B. No. 0042 from the Third Division, it proceeded to conduct hearings on the prayer for the issuance of the injunctive writ. On June 21, 1989, the SB First Division issued a Resolution[11] denying petitioners' prayer for a preliminary injunction, which ratiocinated this way:

> The complaint as well as the affidavit of plaintiff Oscar Manuel dated September 30, 1988 have provided details mainly about the acquisition of the first one (1) billion shares acquired by Pres. Marcos in 1970.[12]
>
> x x x x
>
> No additional details are given on how Marcos acquired the second set of shares of stock in ORIENTAL PETROLEUM except that:
>
> - The 1.85 billion shares of ORIENTAL were transferred by means of "simulated transactions" which were "forced (upon) Oriental's Management" (Affidavit, par. 12; see also par. 2.10.1, Complaint).
>
> - The third block of ORIENTAL shares were allegedly obtained by Pres. Marcos through a "systematic abuse of power" where Marcos forced ORIENTAL to increase its authorized capital and to issue 2.5 billion shares to an undisclosed entity in exchange for 2.5% in the Service Contract No. 14 for the Nido and the Matinloc wells. (par. 13, Affidavit; par. 2.11 Complaint).
>
> Eventually, this undisclosed entity turned out to have been Piedras Petroleum Corporation.
>
> While all these shares appear to have been sequestered in April of 1986, the PCGG by its letter dated March 17, 1987, allegedly acknowledged that the above-described transaction with PIEDRAS involving the 2.5 billion shares was inappropriate and the PCGG, therefore, had decided to return these 2.5% share of the Service Contract above-mentioned. The condition stated in (sic) letter was that ORIENTAL for its part should return its income from 2.5% share in Service Contract No. 14 less the dividends received by PIEDRAS from those 2.5 billion shares. Nothing is mentioned about what happened to this arrangement.[13]
>
> x x x x
>
> As pointed out above, plaintiffs have confined themselves to describing the transfer of 1.85 billion shares in 1976 as one made through "simulated transactions" forced upon ORIENTAL's management and the exchange of 2.5 billion shares with a portion of Service Contract No. 14 through a "systematic abuse of power," without mention of any further details thereof as to how indeed this abuse of power took place.
>
> x x x x
>
> Thus, the right of plaintiffs either by themselves or in representation of ORIENTAL over the shares in question are not clear as to justify a restraint upon the PCGG or upon the Republic in acting on the shares which, even to plaintiffs, are admittedly "ill-gotten."[14]

Prompted by the above disquisition, on October 18, 1989, petitioners filed their Motion for Leave to Admit Amended Complaint[15] and Amended Complaint[16] seeking to state more fully their averments in express terms which were only implied from the ultimate facts in their original Complaint. Subsequently, on March 21, 1990, the SB issued the assailed Resolution denying admittance of petitioners' amended complaint this way:

> The Answers have already been filed. What this proposed amended complaint seeks to do is to allege additional facts in order to supply the missing or omitted data which omission had resulted in the denial by this Court of the petition for the issuance of the writ of preliminary injunction. In fact, the alterations in the prepared amended complaint are such that the statement of the wrong done has been substantially altered from that which originally confronted the defendants and this Court.[17]

On April 15, 1990, petitioners filed their Motion for Reconsideration[18] of the March 21, 1990 Resolution, which was denied by the respondent court through the assailed May 12, 1998 Order.[19]

Hence, the instant petition for certiorari is filed with us attributing grave abuse of discretion on respondent anti-graft court for the rejection of petitioners' amended complaint.

In the meantime, the following relevant events transpired pending the instant action for certiorari:

First, private respondent Eduardo F. Hernandez, a former officer and director of Oriental, was cleared by us of any wrongdoing relative to the sale of the 999 million shares by the PCGG to the Barcelon-Ultrana Group. In Eduardo F. Hernandez v. Deputy Ombudsman for Luzon, et al. docketed as G.R. No. 101967, through a May 5, 1992 en banc Resolution,[20] we ordered the Ombudsman to modify its September 3, 1990 Resolution and August 14, 1991 Order to exclude respondent Eduardo F. Hernandez from the Information. We reiterated this same ruling in an en banc Resolution[21] issued on November 19, 1992 in Rev. Fr. Emeterio Barcelon, S.J., et al. v. Deputy Ombudsman for Luzon, et al., docketed as G.R. No. 101326, and Eduardo F. Hernandez v. Deputy Ombudsman for Luzon, et al., that as regards Hernandez, there is no prima facie evidence to hold him probably liable for conspiracy relative to the sale of 999 million shares of Oriental stocks to the Barcelon-Ultrana Group by the PCGG.

Indeed, respondent Hernandez earlier filed his motion to dismiss dated July 3, 1997 based on our decision in G.R. No. 101967. This was duly opposed by petitioners. However, on October 2, 1998, the respondent court through a Resolution[22] dismissed the instant case as regards respondent Hernandez.

Second, pursuant to Administrative Order No. (AO) 241[23] issued on October 4, 1991 by then President Corazon Aquino, which provided that APT's control and administrative responsibilities over recovered ill-gotten wealth are terminated upon the return to the PCGG of said properties, respondent APT returned to the PCGG the 1,004,230,000 shares of Oriental it earlier received, which is the subject of the instant case. Thus, respondent APT contends that the questioned transfer of said shares is now moot and academic.

Third, the term of existence of APT expired on December 31, 2000 pursuant to Republic Act No. 8758.[24] However, on December 6, 2000, Executive Order No. 323 was issued by then President Estrada creating the Privatization and Management Office (PMO) which essentially took over the powers, functions, duties, and responsibilities of APT. Thus, PMO replaced respondent APT as party to the instant case.

Fourth, respondents Antonio Caguiat and Valeriano Fugoso reportedly passed away.

On February 6, 2001, counsel of Antonio Caguiat filed on account of Caguiat's death an undated Motion to Withdraw as Counsel for Antonio Caguiat,[25] and prayed that respondent Caguiat be dropped as party-litigant. Petitioners opposed said motion as it should be properly addressed to the respondent court, for a party litigant who dies during the pendency of a civil case is not automatically discharged from the case in accord with Section 16,[26] Rule 3 of the 1997 Revised Rules of Civil Procedure. In the Court's April 27, 2005 Resolution,[27] we required respondent Caguiat's counsel to inform the Court of the names of the heirs of respondent Caguiat. In his May 31, 2005 Compliance,[28] said counsel submitted the names of respondent Caguiat's legal heirs.

On the other hand, respondent Valeriano Fugoso died on January 14, 2004 as evidenced by his Death Certificate.[29] In the Court's February 14, 2005 Resolution,[30] we dismissed the instant case with respect to respondent Valeriano Fugoso.

The Issues

Petitioners raise the following issues for our consideration:

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

I

WHETHER THE PRESENT PETITION SHOULD BE DISMISSED FOR FORUM-SHOPING AND RES JUDICATA.

II

WHETHER PRIVATE RESPONDENT ASSET PRIVATIZATION TRUST (NOW PRIVATIZATION AND MANAGEMENT OFFICE) SHOULD REMAIN A PARTY IN THIS ACTION.

III

WHETHER THE HONORABLE SANDIGANBAYAN ACTED WITHOUT OR IN EXCESS OF JURISDICTION, OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION, IN DENYING THE ADMISSION OF THE AMENDED COMPLAINT DATED 18 OCTOBER 1989.

- WHETHER THE PROPOSED AMENDMENT SUBSTANTIALLY ALTERS PETITIONERS' CAUSE OF ACTION.

- WHETHER THE PROPOSED AMENDMENT WILL PREJUDICE RESPONDENTS OR PLACE THEM AT A DISADVANTAGE.

- WHETHER THE PROPOSED AMENDMENT SHOULD BE ALLOWED.[31]

The Court's Ruling

Core issue of grave abuse of discretion

Petitioners strongly contend that respondent court gravely abused its discretion amounting to lack or excess of jurisdiction in denying admission of their proposed amendments. They argue that the proposed changes do not modify their cause of action and neither do they prejudice respondents who will be given ample time to answer considering that the trial of the instant case has not yet commenced. In asserting that their cause of action remains the same, petitioners point out that the proposed amendments do not change their allegations as the amendments only detailed, amplified, and made in express terms the same alleged transactions that are the subjects of the controversy and which were impliedly alleged in the original complaint, citing Rubio v. Mariano.[32]

Petitioners asseverate that in the interest of justice, and in consonance with the spirit of the law, amendments to pleadings are allowed at any stage of the action to avoid multiplicity of suits and, more importantly, to accord the parties to present the real controversy for the proper determination of the parties' rights and the case decided on the merits without unnecessary delay. Moreover, they point that in a line of cases, this Court had favored amendments to pleadings, as the rules on them, which are permissive in character, are liberally construed without regard to technicalities.[33] Petitioners rely on Sedeco v. Court of Appeals[34] and Paman v. Diaz[35] which applied the liberality of the rules as regards admittance of amendments, and Marini-Gonzales v. Lood[36] where we allowed admittance of amendments to the pleading despite the result that it substantially altered the theory of the case, in furtherance of justice. Finally, petitioners argue that the amended complaint will not prejudice nor place respondents at a disadvantage as they will be accorded time to answer the amended complaint, and thus can prepare sufficiently for trial considering that the trial proper has not yet commenced.

For their part, respondents countered that petitioners' proposed amendments indeed constitute a substantial change of the cause of action. They aver that the proposed amendments were pursued in order to delay the instant case since what have been proposed could be well ventilated during trial with testimonial evidence and proper representation.

The principal issue to be resolved in the instant action is whether the SB committed grave abuse of discretion correctable by certiorari in denying the admission of petitioners' proposed amended complaint.

We answer in the negative.

Trial court granted sound discretion in the admittance or denial of proposed amendments to pleadings

The Revised Internal Rules of the SB does not provide for amendment of the initiatory pleading. Thus, the pertinent provisions of the 1997 Revised Rules of Civil Procedure apply in a suppletory manner.

Rule 10 of the 1997 Revised Rules of Civil Procedure shows how a pleading is amended, thus:

> SEC. 2. Amendments as a matter of right.--A party may amend his pleading once as a matter of right at any time before a responsive pleading is served or in the case of a reply, at any time within ten (10) days after it is served.
>
> SEC. 3. Amendments by leave of court.-- Except as provided in the next preceding section, substantial amendments may be made only upon leave of court. But such leave may be refused if it appears to the court that the motion was made with intent to delay. Orders of the court upon the matters provided in this section shall be made upon motion filed in court, and after notice to the adverse party, and an opportunity to be heard. (Emphasis supplied.)

In the case at bar, the individual respondents had already filed their respective answers with the respondent court when petitioners filed their motion for leave to admit amended complaint. Thus, Sec. 3 squarely applies to the amended complaint and hence, leave of court is required.

It is clear from the aforequoted Sec. 3 that the trial court is accorded sound discretion to grant or deny the admission of any proposed substantial amendments to a pleading, like a complaint as in the instant case. The rule expressly provides that the proposed amendments are refused admittance if it appears that these are substantial and were made to delay the case. Generally, where the trial court has jurisdiction over the case, proposed amendments are denied if such would result in delay,[37] or would result in a change of cause of action or defense or change the theory of the case,[38] or are inconsistent with the allegations in the original complaint.[39]

Are the proposed amendments substantial?Will the proposed amended complaint result in delay?

The answer is in the affirmative.

The court a quo, in denying the amendment of the complaint, found that the proposed amendments are substantial, and also took into consideration the possibility of delay in the processing and adjudication of the case if the modified initiatory pleading is allowed.

Proposed amendments are substantial

Petitioners wanted to incorporate the following amendments into a bid to show details on how the 1.85 billion shares (second block) and the 2.5 billion shares (third block) of Oriental were allegedly extorted by Marcos and his cronies through simulated transactions and systematic abuse of power:

(a) With regard to the parties, petitioners wanted to insert John Does[40] as defendants, and to highlight the capacity of plaintiffs as stockholders allegedly not privy to the assailed transactions;[41]

(b) The gargantuan amendments were proposed in the allegations common to all causes of action where petitioners wanted to insert a historical background and other allegations emphasizing that a large portion of plaintiff Oriental's unsubscribed capital stock were allegedly taken illegally by Marcos and his cronies through the initial issuance of 1 billion shares, and the subsequent issuances of an additional 1.85 billion shares and 2.5 billion

shares;[42]

(c) In standing to sue, petitioners wanted to insert in paragraphs 3.02, 3.05, and 3.07 some statements to emphasize their standing and right to recover what were allegedly illegally taken from Oriental through duress or extortion;[43]

(d) On the jurisdiction of the Sandiganbayan, petitioners wanted to insert the statement that it is absurd to seek relief from the PCGG which is the adverse party;[44]

(e) In the first cause of action, petitioners wanted to add averments that PCGG's claim over the subject shares based on Campos' affidavit is illegal as Campos did not own the shares;[45]

(f) In the second cause of action, petitioners wanted to insert the averment that E. Barcelon was remiss of his task to recover the subject shares by unlawfully usurping the opportunity to acquire them at a bargain;[46]

(g) In the third cause of action, petitioners wanted to add the averment which is a mere reiteration of the proposed amendment in the first cause of action that Campos' affidavit did not confer to PCGG or the Government ownership over the subject Oriental shares;[47]

(h) In the fourth cause of action, petitioners wanted to add the averment of the PCGG's alleged consistent stance that Marcos unlawfully accumulated wealth by confiscating businesses and taking undue advantage of his powers;[48]

(i) In the fifth cause of action, petitioners wanted to insert the averment of the alleged nullity of the exchange of 2.5 billion Oriental shares with 2.5% interest in Service Contract No. 14 allegedly admitted by the PCGG in the Racketeering Influenced Corrupt Organizations case, that Oriental is one of the corporations controlled by Rolando Gapud for Marcos.[49]

The foregoing proposed amendments carefully considered the original complaint, particularly the addition of defendants John Does or whoever succeeded private respondents as Officers and Directors of the Board of Oriental, and the proposed new factual allegations common to all causes of action. We agree with the SB that the proposed amendments are substantial.

Proposed amendments will cause delay

Moreover, respondent court took into consideration the fact that the 19 defendants have already filed their answers. To entertain the amended pleading will put back the case to square one. Some or all the defendants may file motions to dismiss anchored on grounds that spring from the new averments of the amended complaint. Those dissatisfied with the rejection of their pleas for dismissal will file motions for reconsideration which if denied may opt to elevate the issues to the Court of Appeals (CA). If their petitions were denied by the CA, then they may decide to still ask this Court to rule on their postulations. Without doubt, these proceedings will take years and obnoxious delays will have set in.

Particular note should be taken of the inclusion of John Does as party-defendants. Petitioners, upon knowing the identities of persons who replaced the directors and officers of Oriental, will ask for their addition as defendants. This joinder of additional parties will further cause delay.

Even if the defendants will not resort to a motion to dismiss, some, if not all, will surely ask motions for extensions of time to file their responsive pleading due to the substantial and myriad details incorporated in the amended complaint. Again, a prolongation of the events in a case will be experienced.

Moreover, the SB found that the real objective of petitioners in amending the complaint is "to supply the missing

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

or omitted date which omission had resulted in the denial x x x of the petition for the issuance of the writ of preliminary injunction." In short, what the court a quo found is that the whole exercise of amending the complaint is not to correct or enhance the alleged ultimate facts in the original complaint but to supply evidentiary support to their prayer for injunction. Although rebuffed several times, petitioners may possibly reiterate their plea for the injunctive writ, now using the modified averments in the complaint.

The Court agrees with the foregoing findings.

Sec. 1, Rule 8 of the Rules of Court is clear:

> Section 1. In general.- Every pleading shall contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be, omitting the statement of mere evidentiary facts.

Ultimate facts mean the important and substantial facts which either directly form the basis of the plaintiff's primary right and duty or directly make up the wrongful acts or omissions of the defendant.[50]

On the other hand, eminent jurist Florenz Regalado elucidates that:

> "Evidentiary facts" are those which are necessary to prove the ultimate fact or which furnish evidence of the existence of some other facts. They are not proper as allegations in the pleadings as they may only result in confusing the statement of the cause of action or the defense. They are not necessary therefor, and their exposition is actually premature as such facts must be found and drawn from testimonial and other evidence.[51]

It is clear from the many proposed changes in the complaint that said averments pertain to evidentiary facts and are not essential components of the ultimate facts of petitioners' complaint. This conclusion results from the admission of petitioners that the "proposed amendments only detail[ed], amplified and made in express terms the same wrong with respect to the same alleged transactions that are the subject of the controversy." Being merely evidentiary facts, the proposed amendments then are unnecessary to justify admission by the SB.

In the light of the foregoing considerations, the Court does not see how the SB gravely abused its discretion in disallowing the amended complaint.

Such alleged error of judgment in denying the motion to admit amended complaint cannot be considered as grave abuse of discretion correctable by certiorari. Certiorari is not available to correct errors or mistakes in a tribunal's findings and conclusions of law and fact. Moreover, the denial of a motion to admit amended complaint, being interlocutory, cannot be questioned by certiorari. It cannot be the subject of appeal, until a final judgment or order is rendered.[52]

The proper remedy against an order denying a motion to admit amendments to a pleading is to continue with the trial and interpose the proper testimonial and documentary evidence to prove ultimate facts that are supposed to be included in the amended complaint. It is only in the presence of extraordinary circumstances evincing a patent disregard of justice and fair play where resort to a petition for certiorari is proper.[53]

Petitioners still have other available remedies sans amendments

One last point. Petitioners are not entirely without an adequate remedy if their only objective in amending the complaint is to provide details or amplification to their allegations in the original complaint. On July 1, 2004, the rule on guidelines to be observed by trial court judges and clerks of courts in the conduct of pre-trial and use of deposition-discovery measures under A.M. No. 03-1-09-SC took effect. These guidelines are enhancements of Rule 18 on Pre-trial.

In Rule 18 and in the pre-trial guidelines, the parties are required to submit pre-trial briefs which should contain a summary of admitted facts and proposed stipulation of facts and a list of documents or exhibits to be presented.[54] Petitioners can present the details sought to be introduced in the original complaint by listing them as admitted facts. If there are no admissions on these factual matters, then these details can be proposed as stipulation of facts which will be scrutinized and discussed during the pre-trial conference.

Again in the pre-trial guidelines, the parties are required to use the different modes of discovery and deposition under Rules 23, 25, 26, 27, and 28 within five (5) days from the filing of the answer.[55] Petitioners can avail of written interrogatories under Rule 25 to obtain information from respondents on the proposed amendments or make use of the request for admission by adverse party under Rule 26 to procure categorical answers under oath from the adverse party relating to the alleged details.

Moreover, the pre-trial brief has to identify all pieces of evidence to be presented during trial whether parole, documentary, or object. These pieces of evidence will certainly provide the details sought to be incorporated by petitioners in their amended complaint.

Last but not the least important, the judge during the pre-trial conference is tasked to find out whether the pleadings especially the complaint and the answer are in order. If not, then he can order the amendments if necessary.[56] If petitioners can show to the satisfaction of the court based on the pieces of evidence they intend to present that amendments to their complaint are in order, then the judge would issue the appropriate order for the amendment of the complaint. Unlike the bare allegations of petitioners in the amended complaint, during pre-trial, the probability of having said amendments accepted are greater in view of the presentation of the pieces of evidence before the Court to support the proposed changes in the complaint. Thus, everything is not lost on the proposed amendments to the initiatory pleading as ample remedy is still available during the pre-trial. In this light, the resort to the writ of certiorari is not justified.

No Forum Shopping and res judicata

Respondents Hernandez, Roxas, and the PMO raise the issues of forum shopping and res judicata in their comments, arguing that this petition be denied as petitioners are guilty of forum shopping and that res judicata already applies. Said respondents allege that the following cases were concealed by petitioners:

- SEC Case No. 1690 and SEC Case No. 1708, Alex Realty, Celso Fernandez, et al. vs. Oriental Petroleum, Yao Shiong Shio, et al.;

- Civil Case No. 55427, RTC-Pasig, Oriental Petroleum, Yao Shiong Shio, Oscar Manuel, et al. vs. PCGG and Fr. Barcelon;

- Civil Case No. 88-14, RTC-Makati, Oriental Petroleum, Oscar Manuel, et al. vs. PCGG, Fr. Barcelon, et al.;

- SEC Case No. 3325, Erlinda Matic, et al., on behalf of Oriental Petroleum, et al. vs. Fr. Barcelon, et al.;

- SEC Case BB No. 168 and PED Case No. 87-0339;

- SEC Case No. 3177 (CA-G.R. SP No. 15010), Oriental Petroleum, Teodoro Hilado vs. Yao Shiong Shio, et al.;

- SEC Case No. 00299, Simplicio Roxas, et al. vs. Oriental Petroleum, Yao Shiong Shio, Oscar Manuel, et al.

As aptly countered by petitioners, this issue has not been raised in a motion to dismiss in S.B. Case No. 0042 below. We therefore cannot entertain and resolve this issue at this point as it is properly within the purview and jurisdiction of respondent court SB to resolve. Indeed, the instant petition only assails the denial of petitioners'

proposed amended complaint.

Moreover, even if we delve into this issue, no pertinent and relevant parts of the records of the above enumerated cases are presented to prove the existence of forum shopping or the application of res judicata to bar S.B. Case No. 0042, and much less the instant petition. The mere enumeration of the cases in different fora, whether yet pending, resolved, or decided, cannot by itself vest upon us the right to determine a violation of forum shopping or the existence of res judicata without competent evidence of the relevant portions of the official records thereof.

Finally, the fact that Civil Case S.B. No. 0041 was dismissed or withdrawn upon the instance of some of petitioners and the subsequent filing of the instant case in S.B. Case No. 0042 in lieu of the other case cannot amount to forum shopping, as the Rules allow the withdrawal of a complaint at the instance of the plaintiffs who are not prejudiced thereby nor precluded from re-filing the same case or substantially the same complaint absent any indication otherwise in the order or approval of the dismissal or withdrawal of the complaint. Thus, Secs. 1 and 2 of Rule 17, 1997 Revised Rules of Civil Procedure pertinently provide:

> SECTION 1. Dismissal upon notice by plaintiff.--A complaint may be dismissed by the plaintiff by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Upon such notice being filed, the court shall issue an order confirming the dismissal. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim.
>
> SEC. 2. Dismissal upon motion of plaintiff. --Except as provided in the preceding section, a complaint shall not be dismissed at the plaintiff's instance save upon approval of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion for dismissal, the dismissal shall be limited to the complaint. The dismissal shall be without prejudice to the right of the defendant to prosecute his counterclaim in a separate action unless within fifteen (15) days from notice of the motion he manifests his preference to have his counterclaim resolved in the same action. Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice. A class suit shall not be dismissed or compromised without the approval of the court. (Emphasis supplied.)

It is undisputed that on July 27, 1988, some of the herein petitioners filed a Notice of Dismissal in S.B. Case No. 0041 which was duly approved by the SB First Division on July 28, 1988, which paved the way for the filing of the instant case also on the same date of July 28, 1988, docketed as S.B. Case No. 0042. However, it has not been shown that said approval has been issued with prejudice against petitioners precluding them from the re-filing of substantially the same complaint. Thus, there is no violation of forum shopping as regards the filing of the complaint in S.B. Case No. 0042 in lieu of the amendment of petitioners' complaint in S.B. Case No. 0041 which was properly dismissed.

PMO as party-litigant

Anent the issue of whether PMO vice APT must continue to be a party-litigant, we agree with petitioners that PMO has not shown that the assailed transfer of 1,004,230,000 shares of Oriental stocks from PCGG has indeed been mooted. PMO's contention that it has returned the Oriental stocks transferred to it by the PCGG pursuant to AO 241 is a mere self-serving assertion as no proof was shown that indeed the questioned 1,004,230,000 shares of Oriental have been returned to PCGG.

Dismissal of S.B. Case No. 0042 as regards respondent Hernandez, Fugoso and Caguiat

In consonance with our determination in and disposition of G.R. No. 101967, respondent Eduardo F. Hernandez must be dropped as party-litigant in the instant case as he had no participation in the conveyance of the 999

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

million Oriental shares. In G.R. No. 101967, we found that:

> The records disclose that petitioner [Hernandez] did not participate at any time in the execution of the contract of sale between PCGG represented by Ramon Diaz and the Barcelon/Ultrana Group represented by F. Barcelon. The contract was duly executed and signed by Ramon Diaz and Fr. Barcelon with PCGG director Jaime Ledesma as witness. The findings of the Ombudsman show that the negotiations between PCGG and Barcelon were "secret" and that the Oriental stockholders were not informed of the ongoing negotiations.
>
> There is no showing that petitioner Hernandez conspired and cooperated with the other co-respondents. In fact as reflected in the minutes of the board meeting of Oriental Corporation, when the sale was brought to the attention of the board, Hernandez openly expressed his opposition to the sale of the subject shares of stocks. (Annex B, Comment) The other directors were silent. The Oriental Board did not approve the sale.
>
> x x x x
>
> Petitioner Hernandez was part time president for only one year from April 1986 to April 1987. When Oriental accepted the proceeds of the sale, Hernandez was no longer a board member and Pedrosa was already the president. When the board of Oriental granted 100% stock dividends to stockholders in 1987, Hernandez was neither President nor board member.

Accordingly, S.B. Case No. 0042 should be dismissed as regards respondent Eduardo F. Hernandez.

In the Court's February 14, 2005 Resolution,[57] we dismissed the instant case with respect to respondent Valeriano Fugoso who died on January 14, 2004. It is undisputed that respondent Antonio Caguiat has likewise passed away per Compliance[58] filed by petitioners informing the Court of respondent Caguiat's demise. Thus, in line with our February 14, 2005 Resolution, we likewise dismiss the instant case with respect to respondent Caguiat.

WHEREFORE, the petition is DISMISSED for lack of merit, and the March 21, 1990 Resolution and May 12, 1998 Order of the SB First Division are hereby AFFIRMED. S.B. Case No. 0042 is DISMISSED with respect to respondents Eduardo F. Hernandez, Valeriano Fugoso, and Antonio Caguiat. Let the SB continue with the hearing and resolution of the case with dispatch. Costs against petitioners.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Tinga, JJ., concur.

---

[1] Rollo, pp. 3-43.

[2]Id. at 244. The Resolution was issued by Presiding Justice Francis E. Garchitorena (Chairperson) and Associate Justices Regino C. Hermosisima, Jr. and Augusto M. Amores of the First Division.

[3]Id. at 179-243.

[4] Id. at 276-277. The Order was issued by Associate Justice Sabino R. De Leon, Jr. (Chairperson) and Associate Justices Narciso S. Nario and Teresita Leonardo-De Castro of the Fourth Division.

[5]Id. at 304-314.

[6] Id. at 322-329.

[7] Id. at 44-108.

[8] Id. at 153-154; Sandiganbayan First Division June 22, 1989 Resolution.

[9]Id. at 315.

[10] Id. at 316.

[11]Id. at 151-175.

[12]Id. at 155.

[13]Id. at 158-159.

[14] Id. at 173-174.

[15] Id. at 176-178.

[16] Id. at 179-243.

[17] Id. at 244.

[18]Id. at 245-275.

[19] Supra note 4.

[20]Rollo, pp. 412-419.

[21] Id. at 420-430.

[22]Id. at 508-517.

[23] "Amending Administrative Order No. 43, S. of 1987, entitled 'Authorizing the Asset Privatization Trust to Dispose Off Properties Recovered by the Presidential Commission on Good Government' and for Other Purposes."

[24] "An Act Extending the Term of the Committee on Privatization and the Asset Privatization Trust Amending for the Purpose Republic Act Numbered Seven Thousand One Hundred Eighty-One, as Amended" (1999).

[25] Rollo, pp. 657-661.

[26]Sec. 16. Death of party; duty of counsel.--Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian ad litem for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

[27] Rollo, pp. 1113-1114.

[28]Id. at 1117-1121.

[29] Id. at 874.

[30] Id. at 1122-1123.

[31] Id. at 976.

[32]No. L-30404, January 31, 1973, 49 SCRA 319.

[33] Id.; citing Malayan Insurance v. Delgado Shipping, No. L-22811, May 19, 1966, 17 SCRA 176; Mendiola v. Tancinco, 109 Phil. 317 (1960); Cese v. GSIS, No. L-13581, 109 Phil. 305 (1960); Arches v. Villaruz, 102 Phil. 661 (1957); Dacanay v. Lucero, 76 Phil. 139 (1946).

[34] No. L-41543, July 19, 1982,115 SCRA 96.

[35]G.R. No. 59582, August 26, 1982, 116 SCRA 125.

[36] No. L-35098, March 16, 1987, 148 SCRA 452.

[37]Lerman v. Reyes, et al., 103 Phil. 1027 (1958).

[38] Torres v. Tomacruz, 49 Phil. 913 (1927).

[39]Guzman-Castillo v. Court of Appeals, No. L-52008, March 25, 1988, 159 SCRA 220.

[40]Rollo, pp. 181-182. Par. 1.14 reads: Defendants John Does are persons presently unknown to plaintiffs who may have replaced some of the aforenamed individual defendants as directors and/or officers of plaintiff Oriental at the time of the filing of this amended complaint as well as all those who may succeed them as such directors and/or officers during the pendency of this suit, with offices at c/o Oriental Petroleum Corp., 7[th] Floor, Corinthian Plaza, Paseo de Roxas, Legaspi Village, Makati, Metro Manila.

[41] Id. at 184. Par. 1.23.2 reads: However, plaintiffs Vivian Locsin, Ramon Linan, Paz Fores, Sixto Racelis have never been directors and/or officers of plaintiff Oriental since they became stockholders thereof, nor were they privy to any of the corporate transactions, occurrences or dealings subject hereof.

[42] Id. at 184-206. The proposed amendments read:

2.01 In or about September 1969, Jose Ma. Barcelon, Alfredo C. Ramos and Isidro Fojas separately and individually applied, pursuant to the Petroleum Act of 1949, for seventeen (17) petroleum concessions, comprising 1,319,132.26 hectares, in the offshore areas of Palawan. Their applications were favorably endorsed by the Director of Mines to the Secretary of Agriculture and Natural Resources. Upon finding that the applications were in order and the applicants qualified, the Secretary of Agriculture and Natural Resources subsequently caused the application to be published in October 1969 in the Official Gazette and a newspaper of general circulation pursuant to the Petroleum Act of 1949 as amended. The period of publication of the application expired without any objection or adverse claim filed by any party, hence pursuant to Section 28 of the Petroleum Act "it shall be conclusively presumed that no such adverse claim exists and thereafter no objection from third parties on the granting of the concession shall be heard, and the contract of concession shall be executed by the Secretary of Agriculture and Natural Resources for the Republic of the Philippines."

2.02 On 22 December 1969, Oriental was incorporated for the purpose of exploring, developing, financing, and acquiring all kinds of petroleum and mineral properties in the Philippines.

x x x x

2.02.2 The incorporators were Jose Ma. Barcelon, Alfredo Ramos, Vincent Recto and Felipe Cruz, as majority

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

stockholders, and Yao Shiong Shio and six (6) others as minority stockholders. Recto, Jose Ma. Barcelon and Ramos, the Chairman, President and Treasurer, respectively, controlled the Board and dictated important corporate actions, policies and decisions of Oriental. Yao was just a minority in the Board and only the Vice Chairman.

2.03 In view of the magnitude and scale of the business which the company was to engage in, it was decided that it go public rot raise the required capitalization.

x x x x

2.03.02 On or about 24 March 1970, Oriental applied and was granted the right to publicly sell its shares in the stock exchange.

2.04 Sometime in January and February 1970, Jose Ma. Barcelon, Ramos and Fojas entered into separate exploration, exploitation and/or operating agreements with Oriental, covering their respective individual petroleum concession applications, whereby in consideration for Oriental's granting each of them an option to buy 250 million shares of Oriental (exercisable within a period of 3 years) they waived any and all royalties and benefits that may be due them under the said concessions.

2.04.1 At this time, notwithstanding full compliance with all the legal requirements and the absence of any adverse claim or objection to the applications for petroleum concessions, the contracts of concession were not acted upon by the governmental authority concerned.

2.05 By then, Marcos had been well-entrenched in power. "During his twenty years as President of the Philippines, Marcos controlled virtually all of the valuable assets of the Philippine Government. These assets included money and real and personal properties owned by the Philippine government and the Central Bank, entitlements to foreign economic assistance including assistance from the United States and Japan, the right to grant employment by the government of the Philippines under Marcos, the right to decide who could do business in the Philippines, through the granting of licenses, concessions, permits, franchises, and monopolies." (cf. par. 14, Complaint of the Republic of the Philippines v. Ferdinand E. Marcos, et al., Case No. CV 86-3859-MRP (GX) Central District Court of California, United States District Court).

2.05.1 In the 27 July 1970 Board of Director's meeting, Jose Ma. Barcelon, as the underwriter, requested the Board of Oriental for authority to sell locally 1 billion of the 3 billion class "B" shares intended for sale abroad. Curiously, Jose Ma. Barcelon informed the Board that he was not to receive any commission for the sale of the abovementioned Class "B" shares. It was during the discussion of this unusual request that the Board learned for the first time of the unilateral actions of Jose Ma. Barcelon and Ramos, as concession applicants, in asking for Recto's intercession with Marcos to have the concession contracts signed. Recto also informed the Board of Marcos' order to acquire 10% of Oriental's authorized capital stock equivalent to 1 Billion shares to his name and/or his designated custodian. Yao, Cruz, Alejandro, Lichauco and others objected to this arrangement but they were rebuked by Recto who warned them that Oriental will suffer grave consequences to its business should they defy Marcos' order. Confronted by a well grounded fear of an imminent and grave injury upon the corporation and their own business, Yao, Cruz, Alejandro and Lichauco had no other alternative but to submit the President Marcos' coercive acts.

2.05.2 In consequence of such threats and intimidation, Marcos unlawfully acquired one (1) billion shares of stock of Oriental, documented as follows:

x x x x

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

b) Second, the one (1) billion Class "B" shares were placed in the name of Star Management, a corporation controlled by Recto. Instead of a subscription agreement that required a 25% downpayment equivalent to P250,000.00 in cash and the balance payable on call of Oriental's Board, a bill of sale was executed on 7 August 1970, between J.M. Barcelon & Co. and Star Management calling for only a downpayment of P100,000.00 and the balance within a one year period. While it was made to appear that Star Management paid P100,000.00, the money actually came from Oriental itself. First, it was made to appear in the records that Oriental paid Star Management P100,000.00 allegedly for services rendered, then Star Management paid Oriental the same P100,000.00 as downpayment. Thus, there was no valid consideration as there was in fact no intent that any consideration be paid at all.

x x x x

The above-described documentation was designed to conceal not only the interests of Marcos in Oriental but also the extortion perpetrated against Oriental

x x x x

2.07 Additionally, in 1971, Oriental also undertook two (2) additional marine seismic surveys, the results of which led Oriental to apply for eleven (11) petroleum exploration concessions totaling about 668,000 hectares also in Northwestern Palawan. In October 5, 1971, these applications were approved for official publication.

x x x x

2.08.1 With the declaration of Martial Law, the remaining 999 Million shares held by Star Management were warehoused with Barcelon's Ultrana Minerals, a company incorporated on 5 October 1970 and with a paid-up capital of only P50,000.

2.08.2. To document the transfer, a Deed of Conditional Sale was executed on 26 December 17972 by and between J.M. Barcelon & Co., Inc. as underwriter, and Ultrana, both companies controlled by Barcelon, in conjunction with the following fraudulent and fictitious transactions:

x x x x

Again, there was neither lawful consideration and/or payment nor the intent that valuable consideration be paid to Oriental although the Deed of Conditional Sale provides that Ultrana was obliged to pay the par value of these shares and states that Ultrana had made a downpayment of P100,000.00.

x x x x

2.08.3 Likewise, the Deed of Conditional Sale (Annex "C") gave Ultrana one (1) year or up to 29 December 1973, to pay the purchase price of the shares based on par value. When the period above mentioned expired on 29 December 1973, no payment was made. The sale should logically have been cancelled, but it was not.

2.09 On 19 February 1976, the companies with which Oriental entered into service contracts pursuant to PD Nos. 87 and 782, struck oil.

2.09.1 In the morning of 21 February 1976, Yao, Cruz and Manuel, accompanied by Recto, were summoned to Malacanang. After Manuel had reported on the events surrounding the oil discovery, Marcos called Recto aside and talked to him privately. On their way out of Marcos' office, Recto told Yao, F.F. Cruz and Manuel that Marcos directed him to inform the Board of Oriental of his instructions that not only the original 1 Billion shares, (which by then amounted to only 999 Million shares in the custody of Ultrana), be transferred to his assignees but also all of Oriental's unsubscribed shares of stock. Shocked at this demand, Yao, F.F. Cruz and Manuel protested

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

and told Recto that they should not submit to such an illegal exaction but Recto said they had no other alternative.

2.09.2 To prevent Marcos from grabbing all of the unsubscribed shares of Oriental, Yao, Cruz, Ramos and the other directors agreed to have 800 million of the aforementioned shares allocated to the directors, officers and employees of Oriental in recognition of their loyalty and in compensation for their financial sacrifices in the company through its dark yeas from 1971 to 1976.

2.09.3 On 10 March 1976, a special meeting of the Board was convened to formalize the distribution of the 800 million shares. However, when Recto arrived he informed the Board that Marcos would not accept any other arrangement, short of full compliance with his demands. Recto informed the Board that Marcos had directed Gen. Fabian Ver to personally supervise the documentation of the transfer and to report to him on the compliance by the officers of Oriental. Marcos' instructions were to effect the immediate transfer of these shares as follows:

x x x x

To date, plaintiffs are not informed where the 150 million shares of the 2 Billion unsubscribed shares went, but Marcos got only 1.85 billion.

2.09.4 During the 10 March 1976 meeting, Recto also advised the Board that Gen. Ver had called to inform him that their lawyers had been instructed to coordinate with the lawyers of Oriental and J.M. Barcelon & Co. (the underwriter) for the documentation of the transfer.

The Oriental shares were then quoted at 10 to 15 centavos in the stock market and Yao, Cruz and Roxas informed the Board that the arbitrary and unlawful transfer of the shares at par, in the manner directed by Marcos, would cause grave prejudice not only to the corporation but also the stockholders. But Recto warned them of the grave consequences to the corporation and its business should they block the move. The nation then was under martial law. The confluence of executive and legislative powers in the Office of the President gave that office practically the powers of life and death on every business. The circumstances permitted no other alternative. As a result of the aforesaid unlawful acts, they were compelled to make a disproportionate exchange of issues, giving up a bulk of Oriental shares practically for nothing.

2.10 To give the illegal acquisition of the shares a semblance of regularity, the following simulated transfers of the 999 million shares (last held by Ultrana) and the 1.85 Billion shares were effected. These were done pursuant to instructions by Marcos through his agents sometime in March 1976. Thus, to make it appear that these transactions were all done and executed before the oil strike of 1976, the following documents were made, to wit:

2.10.1. Re: 999 Million Ultrana shares

i) It was made to appear, contrary to the truth, that on or about 29 January 1974 or 31 days after the expiration of the period for Ultrana to pay the balance of P9.8 Million which expired on 29 December 1973, Ultrana had requested Oriental for extension of the period for payment up to 24 December 1974 and had sought permission in the interim to transfer its subscription rights thereon to Campos, Recto and Cesar Zalamea who are known Marcos cronies.

ii) It was also made to appear, contrary to the truth, that on 25 November 1975, Campos, Zalamea and Recto had waived their rights on the 999 million Ultrana shares and instead had requested that the shares be transferred to Independent Realty and Recto as aforesaid allegedly in consideration for a downpayment of 25% of the par value of those shares.

iii) Lastly, it was made to appear, contrary to the truth, that it was after the oil strike, specifically on 16 March 1976, that Ultrana assigned its 999 million shares to Independent Realty and Recto.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

Presently, only 162 million shares remain from that first block of shares, now in the name of Independent Realty.

2.10.2 Re: 1.85 Billion Shares

i) It was made to appear, contrary to the truth, that on 26 November 1975, Oriental approved the offer of Performance Investment, Mid-Pasig and Fabian Ver to acquire 1.85 billion Oriental shares at par supposedly because Oriental needed working capital for its Reed Bank project, which capital allegedly could not be raised by selling Oriental's Class "B" shares since these shares were at that time allegedly selling at below par. The actual fact is that these shares were acquired through extortion by Marcos after the oil strike in 1976 and that the corporation did not receive any payment for their full value.

ii) It was made to appear, contrary to the truth, that Oriental as early as 21 November 1975 had sold the 1.85 billion shares to the Marcos cronies.

iii) The deed for Gen. Ver was dated November 1975 but acknowledged only on 16 March 1976 (after the oil strike).

Some undated subscription agreement between Oriental and Performance Investment Corporation covering 1 billion shares prepared in March 1976 upon the direction of Recto subsequently appeared to have been antedated to 21 November 1975.

iv) The aforesaid documents covering Marcos' acquisition of the 1.85 billion shares, although made in 1976 were antedated to 1974 or 1975 and were all executed under coercion and/or duress.

v) To date, the first and second blocks of shares are accounted for as follows:

x x x x

2.11 Plaintiffs' participation in the aforesaid acts were done as aforestated under compulsion and/or duress.

2.12 Re: Piedras Shares

i) Sometime in December 1978, Marcos directed Recto to exchange a 2.5% interest in Service Contract No. 14 with 2.5 billion shares of Oriental. All shares in Oriental having been fully subscribed at the time, Marcos ordered Recto to increase Oriental's capitalization to P125 million by issuing 2.5 billion new shares. On 20 December 1978, Oriental's Board, on Recto's insistence and warnings about the dire consequences to Oriental and to its directors of defying Marcos, was compelled, against its will and contrary to the dictates of its business judgment, to issue several resolutions to comply with Marcos' instructions.

ii) Anticipating that the shareholders would question the exchange, since Oriental shares were then being traded at above par value, defendant Hernandez sought an opinion from the Securities and Exchange Commission ("SEC") as to the question of preemptive rights.

iii) On 17 January 1979, three days before the stockholders' meeting, the Board of Oriental met and was presented with the SEC opinion, stating that "the stockholders have no preemptive rights over the proposed increase since the same would be utilized to purchase a specific property".

iv) At the 1979 stockholders' meeting, the Board and management were subjected to a lot of questions regarding, among others, the identity of the mysterious owner of the 2.5% interest represented by Rolando C. Gapud, the economics of the swap and the SEC opinion on preemptive rights. Thereafter, several minority stockholders filed a suit with the SEC questioning the matters taken up during the meeting. Subsequently, the SEC ruled in favor of Oriental and the exchange of the 2.5% in Service Contract No. 14 for 2.5 billion shares was affected.

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

Piedras Petroleum was identified as the mysterious owner of the 2.5% interest. On 6 December 1979, Rolando C. Gapud, Marcos' factotum and financial adviser, was elected to the Board and installed as President of Oriental.

2.12.1 The aforementioned Piedras transactions were clearly in derogation of law. Not only were these transactions unilaterally imposed upon Oriental, it appears, moreover, that the 2.5% interest in Service Contract No. 14 in exchange for which the 2.5 billion new shares were transferred to Piedras Petroleum, belonged to the government which were transferred to Piedras Petroleum without any lawful consideration. The PCGG later recognized the infirmity of the Piedras transactions, as stated in its letter to Oriental dated 18 March 1987 announcing its decision to effect mutual restitution between Oriental and the Government.

2.12.2 However, the PCGG's decision, per its letter to Oriental dated 18 March 1987, effect mutual restitution between the Government and Oriental, has remained unimplemented on the flimsy excuse that the PCGG would, as represented by defendant Hernandez, lose P6 Million instead of gaining from such restitution. In reality, however, the PCGG's refusal was merely a ploy to further perpetuate the PCGG's control of Oriental.

2.12.3 Over the years, Piedras has likewise received substantial cash dividends.

2.13 Piedras acquisition of 2.5 billion Oriental shares in exchange for the 2.5% interest of the government in Service Contract No. 14 is an illegal transaction, since Piedras illegally acquired the aforesaid shares of the government.

x x x x

2.14.1 Presently, these shares constitute around 36% shares of the capital stock of Oriental sufficient to perpetuate the PCGG and its nominees or confederates' control of Oriental.

2.14.2 Plaintiffs cannot be estopped from asserting their rights and recovering the aforesaid shares taken form them through extortion, since estoppel is to be applied only against wrongdoers, not against the victims of the wrong.

x x x x

2.17 On the basis of a letter report dated April 9, 1986 by Barcelon to then PCGG Chairman Salonga, x x x

2.17.1 x x x This was after Minister Salonga received E. Barcelon's 14 April 1986 letter offering to buy for his group, later identified by E. Barcelon in his 12 May 1986 letter to PCGG Comm. Ramon Diaz as the Barcelon-Ultrana group, the sequestered shares of Oriental. In his letter, Barcelon offered to buy for his group 2.9 billion Class "B" shares, at P0.01 per share, since these shares were allegedly "underhandedly taken away from our group by the Marcos cronies". Further, E. Barcelon stated in his letter that "we had rights to these shares in the name of Ultrana Minerals Corp. but Mr. Marcos ordered these shares sold to them at subscription price in 1976." E. Barcelon informed the PCGG that "they should receive P32.5 million within the next three weeks", or as soon as they can take over the majority in the management of the corporation during the 30 April Stockholders' meeting. Copies of the 10 and 14 April 1986 sequestration orders are attached hereto as Annexes "D" and, "E", respectively.

x x x x

2.20 x x x x

On 13 April 1987, the PCGG advised Oriental that it would vote 4.7 billion sequestered shares during the 30 April 1987 meeting, "pending final adjudication by the Sandiganbayan of the ownership and disposition of the aforesaid sequestered shares."

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

x x x x

2.20.2 On 2 August 1987, the sequestration orders of the PCGG covering the shares in Oriental were automatically lifted, by virtue of Section 26, Article XVIII of the 1987 Constitution, x x x

x x x x

b) Now, PCGG claims, that by virtue of the affidavit of J.Y. Campos, it has become the owner of the shares.

[43]Id. at 212-214. The proposed addition to par. 2.02 reads: x x x including individual plaintiffs i.e., Locsin, Linan, Fores and Racelis. The right of the corporation to recover its property which was unlawfully taken from it either through duress or extortion or in contravention of public policy cannot be disputed. The same is true with plaintiff stockholders.

The proposed insertion in par. 3.05 reads: x x x Additionally, Oriental is unduly deprived of its property which it intends to sell at market value to finance its present operations. x x x

The proposed insertion in par. 3.07 reads: x x x and belatedly, J.Y. Campos' affidavit which did vest ownership in the PCGG or the Government.

[44]Id. at 216. The proposed insertion in par. 3.08.4 reads: Thus, it would be absurd for plaintiffs to seek relief from the PCGG, at the first instance, since the PCGG would be the adverse party and judge at the same time. In any event, plaintiffs, have repeatedly made representations with the PCGG and the Solicitor General for the restitution of the ill-gotten shares subject hereof to Oriental.

[45]Id. at 221. The proposed additions are:

4.06 The PCGG's claim of dominion over the shares on the basis of the Campos' affidavit is likewise illegal:

a) The affidavit did not transfer ownership of the Oriental shares to the PCGG or the Government.

b) Campos did not own the shares, hence, could not lawfully convey them to the PCGG or to anyone for that matter. Neither has the defendant corporation of Marcos have any right to transfer these shares which were acquired unlawfully through extortion.

[46] Id. at 222. The proposed insertion in par. 5.03.2 reads: E. Barcelon who was tasked to recover those shares for the benefit of and in behalf of Oriental and its stockholders in general, has breached his fiduciary duty by unlawfully usurping, with the use of the so-called Barcelon-Ultrana Group, this corporate opportunity at a tremendous bargain.

[47]Id. at 223.

[48]Id. at 224. The proposed addition reads:

7.04. In fact, since its creation in 1986, the PCGG has consistently maintained that Marcos, from the early years of his presidency, had "confiscated businesses" and taken "undue advantage of his powers as President" to accumulate ill-gotten wealth in all forms of businesses in the Philippines including all or substantially all oil companies in the Philippines. This position is evident in the pleadings of the Government on file with this Honorable Court in the various ill-gotten wealth cases filed by it and recently in its RICO case against Marcos in the United States, i.e., Case No. CV 86-3859-MRP (GX) pending with the United States District Court for the Central District of California.

[49] Id. at 225. The proposed insertion in par. 8.03 reads: The "exchange" x x x is void ab initio. Likewise, this fact is well admitted by the PCGG in its aforementioned RICO case against Marcos in which it listed Oriental as

one of the corporations controlled for him by Rolando Gapud.

[50]Alzua v. Johnson, 21 Phil. 308 (1912).

[51] I F. Regalado, REMEDIAL LAW COMPENDIUM 169-170 (9th revised ed., 2005).

[52] Santiago Land Development Co. v. CA, G.R. No. 103922, July 9, 1996, 258 SCRA 535.

[53]Tribiana v. Tribiana, G.R. No. 137359, 13 September 2004, 438 SCRA 216.

[54]PRE-TRIAL GUIDELINES, Rule 18, Secs. 2(b) & 6(b).

[55]Id., No. 1, A, Item 1, Sub-item 1.2.

[56] Id., Letter (c), No. 5, A on Civil Cases.

[57] Supra note 30.

[58]Rollo, pp. 582-583.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.