

VICENTE B. CHUIDIAN, PETITIONER, VS. SANDIGANBAYAN (FIFTH DIVISION) AND THE REPUBLIC OF THE PHILIPPINES, RESPONDENTS.*G.R. No. 139941. January 19, 2001*

Ponente: YNARES-SANTIAGO, J.

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The instant petition arises from transactions that were entered into by the government in the penultimate days of the Marcos administration. Petitioner Vicente B. Chuidian was alleged to be a dummy or nominee of Ferdinand and Imelda Marcos in several companies said to have been illegally acquired by the Marcos spouses. As a favored business associate of the Marcoses, Chuidian allegedly used false pretenses to induce the officers of the Philippine Export and Foreign Loan Guarantee Corporation (PHILGUARANTEE), the Board of Investments (BOI) and the Central Bank, to facilitate the procurement and issuance of a loan guarantee in favor of the Asian Reliability Company, Incorporated (ARCI) sometime in September 1980. ARCI, 98% of which was allegedly owned by Chuidian, was granted a loan guarantee of Twenty-Five Million U.S. Dollars (US\$25,000,000.00).

While ARCI represented to Philguarantee that the loan proceeds would be used to establish five inter-related projects in the Philippines, Chuidian reneged on the approved business plan and instead invested the proceeds of the loan in corporations operating in the United States, more particularly Dynetics, Incorporated and Interlek, Incorporated. Although ARCI had received the proceeds of the loan guaranteed by Philguarantee, the former defaulted in the payments thereof, compelling Philguarantee to undertake payments for the same. Consequently, in June 1985, Philguarantee sued Chuidian before the Santa Clara County Superior Court,[1] charging that in violation of the terms of the loan, Chuidian not only defaulted in payment, but also misused the funds by investing them in Silicon Valley corporations and using them for his personal benefit.

For his part, Chuidian claimed that he himself was a victim of the systematic plunder perpetrated by the Marcoses as he was the true owner of these companies, and that he had in fact instituted an action before the Federal Courts of the United States to recover the companies which the Marcoses had illegally wrested from him.[2]

On November 27, 1985, or three (3) months before the successful people's revolt that toppled the Marcos dictatorship, Philguarantee entered into a compromise agreement with Chuidian whereby petitioner Chuidian shall assign and surrender title to all his companies in favor of the Philippine government. In return, Philguarantee shall absolve Chuidian from all civil and criminal liability, and in so doing, desist from pursuing any suit against Chuidian concerning the payments Philguarantee had made on Chuidian's defaulted loans.

It was further stipulated that instead of Chuidian reimbursing the payments made by Philguarantee arising from Chuidian's default, the Philippine government shall pay Chuidian the amount of Five Million Three Hundred Thousand Dollars (US\$5,300,000.00). Initial payment of Five Hundred Thousand Dollars (US\$500,000.00) was actually received by Chuidian, as well as succeeding payment of Two Hundred Thousand Dollars (US\$200,000.00). The remaining balance of Four Million Six Hundred Thousand Dollars (US\$4,600,000.00) was to be paid through an irrevocable Letter of Credit (L/C) from which Chuidian would draw One Hundred

Thousand Dollars (US\$100,000.00) monthly.[3] Accordingly, on December 12, 1985, L/C No. SSD-005-85 was issued for the said amount by the Philippine National Bank (PNB). Subsequently, Chuidian was able to make two (2) monthly drawings from said L/C at the Los Angeles branch of the PNB.[4]

With the advent of the Aquino administration, the newly-established Presidential Commission on Good Government (PCGG) exerted earnest efforts to search and recover money, gold, properties, stocks and other assets suspected as having been illegally acquired by the Marcoses, their relatives and cronies.

Petitioner Chuidian was among those whose assets were sequestered by the PCGG. On May 30, 1986, the PCGG issued a Sequestration Order[5] directing the PNB to place under its custody, for and in behalf of the PCGG, the irrevocable L/C (No. SSD-005-85). Although Chuidian was then residing in the United States, his name was placed in the Department of Foreign Affairs' Hold Order list.[6]

In the meantime, Philguarantee filed a motion before the Superior Court of Santa Clara County of California in Civil Case Nos. 575867 and 577697 seeking to vacate the stipulated judgment containing the settlement between Philguarantee and Chuidian on the grounds that: (a) Philguarantee was compelled by the Marcos administration to agree to the terms of the settlement which was highly unfavorable to Philguarantee and grossly disadvantageous to the government; (b) Chuidian blackmailed Marcos into pursuing and concluding the settlement agreement by threatening to expose the fact that the Marcoses made investments in Chuidian's American enterprises; and (c) the Aquino administration had ordered Philguarantee not to make further payments on the L/C to Chuidian. After considering the factual matters before it, the said court concluded that Philguarantee "had not carried its burden of showing that the settlement between the parties should be set aside." [7] On appeal, the Sixth Appellate District of the Court of Appeal of the State of California affirmed the judgment of the Superior Court of Sta. Clara County denying Philguarantee's motion to vacate the stipulated judgment based on the settlement agreement.[8]

After payment on the L/C was frozen by the PCGG, Chuidian filed before the United States District Court, Central District of California, an action against PNB seeking, among others, to compel PNB to pay the proceeds of the L/C. PNB countered that it cannot be held liable for a breach of contract under principles of illegality, international comity and act of state, and thus it is excused from payment of the L/C. Philguarantee intervened in said action, raising the same issues and arguments it had earlier raised in the action before the Santa Clara Superior Court, alleging that PNB was excused from making payments on the L/C since the settlement was void due to illegality, duress and fraud.[9]

The Federal Court rendered judgment ruling: (1) in favor of PNB excusing the said bank from making payment on the L/C; and (2) in Chuidian's favor by denying intervenor Philguarantee's action to set aside the settlement agreement.[10]

Meanwhile, on February 27, 1987, a Deed of Transfer[11] was executed between then Secretary of Finance Jaime V. Ongpin and then PNB President Edgardo B. Espiritu, to facilitate the rehabilitation of PNB, among others, as part of the government's economic recovery program. The said Deed of Transfer provided for the transfer to the government of certain assets of PNB in exchange for which the government would assume certain liabilities of PNB.[12] Among those liabilities which the government assumed were unused commercial L/C's and Deferred L/C's, including SSD-005-85 listed under Dynetics, Incorporated in favor of Chuidian in the amount of Four Million Four Hundred Thousand Dollars (US\$4,400,000.00).[13]

On July 30, 1987, the government filed before the Sandiganbayan Civil Case No. 0027 against the Marcos spouses, several government officials who served under the Marcos administration, and a number of individuals known to be cronies of the Marcoses, including Chuidian. The complaint sought the reconveyance, reversion, accounting and restitution of all forms of wealth allegedly procured illegally and stashed away by the defendants.

In particular, the complaint charged that Chuidian, by himself and/or in conspiracy with the Marcos spouses, engaged in "devices, schemes and stratagems" by: (1) forming corporations for the purpose of hiding and avoiding discovery of illegally obtained assets; (2) pillaging the coffers of government financial institutions such as the Philguarantee; and (3) executing the court settlement between Philguarantee and Chuidian which was grossly disadvantageous to the government and the Filipino people.

In fine, the PCGG averred that the above-stated acts of Chuidian committed in unlawful concert with the other defendants constituted "gross abuse of official position of authority, flagrant breach of public trust and fiduciary obligations, brazen abuse of right and power, unjust enrichment, violation of the Constitution and laws" of the land.[14]

While the case was pending, on March 17, 1993, the Republic of the Philippines filed a motion for issuance of a writ of attachment[15] over the L/C, citing as grounds therefor the following:

(1)

Chuidian embezzled or fraudulently misapplied the funds of ARCI acting in a fiduciary capacity, justifying issuance of the writ under Section 1(b), Rule 57 of the Rules of Court;

(2)

The writ is justified under Section 1(d) of the same rule as Chuidian is guilty of fraud in contracting the debt or incurring the obligation upon which the action was brought, or that he concealed or disposed of the property that is the subject of the action;

(3)

Chuidian has removed or disposed of his property with the intent of defrauding the plaintiff as justified under Section 1(c) of Rule 57; and

(4)

Chuidian is residing out of the country or one on whom summons may be served by publication, which justifies the writ of attachment prayed for under Section 1(e) of the same rule.

The Republic also averred that should the action brought by Chuidian before the U.S. District Court of California to compel payment of the L/C prosper, inspite of the sequestration of the said L/C, Chuidian can ask the said foreign court to compel the PNB Los Angeles branch to pay the proceeds of the L/C. Eventually, Philguarantee will be made to shoulder the expense resulting in further damage to the government. Thus, there was an urgent need for the writ of attachment to place the L/C under the custody of the Sandiganbayan so the same may be preserved as security for the satisfaction of judgment in the case before said court.

Chuidian opposed the motion for issuance of the writ of attachment, contending that:

(1)

The plaintiff's affidavit appended to the motion was in form and substance fatally defective;

(2)

Section 1(b) of Rule 57 does not apply since there was no fiduciary relationship between the plaintiff and Chuidian;

(3)

While Chuidian does not admit fraud on his part, if ever there was breach of contract, such fraud must be

present at the time the contract is entered into;

(4)

Chuidian has not removed or disposed of his property in the absence of any intent to defraud plaintiff;

(5)

Chuidian's absence from the country does not necessarily make him a non-resident; and

(6)

Service of summons by publication cannot be used to justify the issuance of the writ since Chuidian had already submitted to the jurisdiction of the Court by way of a motion to lift the freeze order filed through his counsel.

On July 14, 1993, the Sandiganbayan issued a Resolution ordering the issuance of a writ of attachment against L/C No. SSD-005-85 as security for the satisfaction of judgment.[16] The Sandiganbayan's ruling was based on its disquisition of the five points of contention raised by the parties. On the first issue, the Sandiganbayan found that although no separate affidavit was attached to the motion, the motion itself contained all the requisites of an affidavit, and the verification thereof is deemed a substantial compliance of Rule 57, Section 3 of the Rules of Court.

Anent the second contention, the Sandiganbayan ruled that there was no fiduciary relationship existing between Chuidian and the Republic, but only between Chuidian and ARCI. Since the Republic is not privy to the fiduciary relationship between Chuidian and ARCI, it cannot invoke Section 1(b) of Rule 57.

On the third issue of fraud on the part of Chuidian in contracting the loan, or in concealing or disposing of the subject property, the Sandiganbayan held that there was a prima facie case of fraud committed by Chuidian, justifying the issuance of the writ of attachment. The Sandiganbayan also adopted the Republic's position that since it was compelled to pay, through Philguarantee, the bank loans taken out by Chuidian, the proceeds of which were fraudulently diverted, it is entitled to the issuance of the writ of attachment to protect its rights as creditor.

Assuming that there is truth to the government's allegation that Chuidian has removed or disposed of his property with the intent to defraud, the Sandiganbayan held that the writ of attachment is warranted, applying Section 1(e) of Rule 57. Besides, the Rules provide for sufficient security should the owner of the property attached suffer damage or prejudice caused by the attachment.[17]

Chuidian's absence from the country was considered by the Sandiganbayan to be "the most potent insofar as the relief being sought is concerned." [18] Taking judicial notice of the admitted fact that Chuidian was residing outside of the country, the Sandiganbayan observed that:

"x x x no explanation whatsoever was given by him as to his absence from the country, or as to his homecoming plans in the future. It may be added, moreover, that he has no definite or clearcut plan to return to the country at this juncture - given the manner by which he has submitted himself to the jurisdiction of the court." [19]

Thus, the Sandiganbayan ruled that even if Chuidian is one who ordinarily resides in the Philippines, but is temporarily living outside, he is still subject to the provisional remedy of attachment.

Accordingly, an order of attachment [20] was issued by the Sandiganbayan on July 19, 1993, ordering the Sandiganbayan Sheriff to attach PNB L/C No. SSD-005-85 for safekeeping pursuant to the Rules of Court as

security for the satisfaction of judgment in Sandiganbayan Civil Case No. 0027.

On August 11, 1997, or almost four (4) years after the issuance of the order of attachment, Chuidian filed a motion to lift the attachment based on the following grounds: First, he had returned to the Philippines; hence, the Sandiganbayan's "most potent ground" for the issuance of the writ of preliminary attachment no longer existed. Since his absence in the past was the very foundation of the Sandiganbayan's writ of preliminary attachment, his presence in the country warrants the immediate lifting thereof. Second, there was no evidence at all of initial fraud or subsequent concealment except for the affidavit submitted by the PCGG Chairman citing mere "belief and information" and "not on knowledge of the facts." Moreover, this statement is hearsay since the PCGG Chairman was not a witness to the litigated incidents, was never presented as a witness by the Republic and thus was not subject to cross-examination.

Third, Chuidian denies that he ever disposed of his assets to defraud the Republic, and there is nothing in the records that support the Sandiganbayan's erroneous conclusion on the matter. Fourth, Chuidian belied the allegation that he was also a defendant in "other related criminal action," for in fact, he had "never been a defendant in any prosecution of any sort in the Philippines." [21] Moreover, he could not have personally appeared in any other action because he had been deprived of his right to a travel document by the government.

Fifth, the preliminary attachment was, in the first place, unwarranted because he was not "guilty of fraud in contracting the debt or incurring the obligation". In fact, the L/C was not a product of fraudulent transactions, but was the result of a US Court-approved settlement. Although he was accused of employing blackmail tactics to procure the settlement, the California Supreme Court ruled otherwise. And in relation thereto, he cites as a sixth ground the fact that all these allegations of fraud and wrongdoing had already been dealt with in actions before the State and Federal Courts of California. While it cannot technically be considered as forum shopping, it is nevertheless a "form of suit multiplicity over the same issues, parties and subject matter." [22] These foreign judgments constitute *res judicata* which warrant the dismissal of the case itself.

Chuidian further contends that should the attachment be allowed to continue, he will be deprived of his property without due process. The L/C was payment to Chuidian in exchange for the assets he turned over to the Republic pursuant to the terms of the settlement in Case No. 575867. Said assets, however, had already been sold by the Republic and cannot be returned to Chuidian should the government succeed in depriving him of the proceeds of the L/C. Since said assets were disposed of without his or the Sandiganbayan's consent, it is the Republic who is fraudulently disposing of assets.

Finally, Chuidian stressed that throughout the four (4) years that the preliminary attachment had been in effect, the government had not set the case for hearing. Under Rule 17, Section 3, the case itself should be dismissed for laches owing to the Republic's failure to prosecute its action for an unreasonable length of time. Accordingly, the preliminary attachment, being only a temporary or ancillary remedy, must be lifted and the PNB ordered to immediately pay the proceeds of the L/C to Chuidian.

Subsequently, on August 20, 1997, Chuidian filed a motion to require the Republic to deposit the L/C in an interest bearing account. [23] He pointed out to the Sandiganbayan that the face amount of the L/C had, since its attachment, become fully demandable and payable. However, since the amount is just lying dormant in the PNB, without earning any interest, he proposed that it would be to the benefit of all if the Sandiganbayan requires PNB to deposit the full amount to a Sandiganbayan trust account at any bank in order to earn interest while awaiting judgment of the action.

The Republic opposed Chuidian's motion to lift attachment, alleging that Chuidian's absence was not the only ground for the attachment and, therefore, his belated appearance before the Sandiganbayan is not a sufficient

reason to lift the attachment. Moreover, allowing the foreign judgment as a basis for the lifting of the attachment would essentially amount to an abdication of the jurisdiction of the Sandiganbayan to hear and decide the ill gotten wealth cases lodged before it in deference to the judgment of foreign courts.

In a Resolution promulgated on November 13, 1998, the Sandiganbayan denied Chuidian's motion to lift attachment.[24]

On the same day, the Sandiganbayan issued another Resolution denying Chuidian's motion to require deposit of the attached L/C in an interest bearing account.[25]

In a motion seeking a reconsideration of the first resolution, Chuidian assailed the Sandiganbayan's finding that the issues raised in his motion to lift attachment had already been dealt with in the earlier resolution dated July 14, 1993 granting the application for the writ of preliminary attachment based on the following grounds: First, Chuidian was out of the country in 1993, but is now presently residing in the country. Second, the Sandiganbayan could not have known then that his absence was due to the non-renewal of his passport at the instance of the PCGG. Neither was it revealed that the Republic had already disposed of Chuidian's assets ceded to the Republic in exchange for the L/C. The foreign judgment was not an issue then because at that time, said judgment had not yet been issued and much less final. Furthermore, the authority of the PCGG Commissioner to subscribe as a knowledgeable witness relative to the issuance of the writ of preliminary attachment was raised for the first time in the motion to lift the attachment. Finally, the issue of laches could not have been raised then because it was the Republic's subsequent neglect or failure to prosecute despite the passing of the years that gave rise to laches.[26]

Chuidian also moved for a reconsideration of the Sandiganbayan resolution denying the motion to require deposit of the L/C into an interest bearing account. He argued that contrary to the Sandiganbayan's pronouncement, allowing the deposit would not amount to a virtual recognition of his right over the L/C, for he is not asking for payment but simply requesting that it be deposited in an account under the control of the Sandiganbayan. He further stressed that the Sandiganbayan abdicated its bounden duty to rule on an issue when it found "that his motion will render nugatory the purpose of sequestration and freeze orders over the L/C." Considering that his assets had already been sold by the Republic, he claimed that the Sandiganbayan's refusal to exercise its fiduciary duty over attached assets will cause him irreparable injury. Lastly, the Sandiganbayan's position that Chuidian was not the owner but a mere payee-beneficiary of the L/C issued in his favor negates overwhelming jurisprudence on the Negotiable Instruments Law, while at the same time obliterating his rights of ownership under the Civil Code.[27]

On July 13, 1999, the Sandiganbayan gave due course to Chuidian's plea for the attached L/C to be deposited in an interest-bearing account, on the ground that it will redound to the benefit of both parties.

The Sandiganbayan declared the national government as the principal obligor of the L/C even though the liability remained in the books of the PNB for accounting and monitoring purposes.

The Sandiganbayan, however, denied Chuidian's motion for reconsideration of the denial of his motion to lift attachment, agreeing in full with the government's apriorisms that:

x x x (1) it is a matter of record that the Court granted the application for writ of attachment upon grounds other than defendant's absence in the Philippine territory. In its Resolution dated July 14, 1993, the Court found a prima facie case of fraud committed by defendant Chuidian, and that defendant has recovered or disposed of his property with the intent of defrauding plaintiff; (2) Chuidian's belated presence in the Philippines cannot be invoked to secure the lifting of attachment. The rule is specific that it applies to a party who is about to depart from the Philippines with intent to defraud his creditors. Chuidian's stay in the country is uncertain and he may leave at will because he holds a foreign passport; and (3) Chuidian's other ground,

sufficiency of former PCGG Chairman Gunigundo's verification of the complaint, has been met fairly and squarely in the Resolution of July 14, 1993.[28]

Hence, the instant petition for certiorari contending that the respondent Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that:

1)

Most of the issues raised in the motion to lift attachment had been substantially addressed in the previous resolutions dated July 14, 1993 and August 26, 1998, while the rest were of no imperative relevance as to affect the Sandiganbayan's disposition; and

2)

PNB was relieved of the obligation to pay on its own L/C by virtue of Presidential Proclamation No. 50.

The Rules of Court specifically provide for the remedies of a defendant whose property or asset has been attached. As has been consistently ruled by this Court, the determination of the existence of grounds to discharge a writ of attachment rests in the sound discretion of the lower courts.[29]

The question in this case is: What can the herein petitioner do to quash the attachment of the L/C? There are two courses of action available to the petitioner:

First. To file a counterbond in accordance with Rule 57, Section 12, which provides:

SEC. 12. Discharge of attachment upon giving counterbond. - At anytime after an order of attachment has been granted, the party whose property has been attached, or the person appearing on his behalf, may, upon reasonable notice to the applicant, apply to the judge who granted the order, or to the judge of the court in which the action is pending, for an order discharging the attachment wholly or in part on the security given. The judge shall, after hearing, order the discharge of the attachment if a cash deposit is made, or a counterbond executed to the attaching creditor is filed, on behalf of the adverse party, with the clerk or judge of the court where the application is made, in an amount equal to the value of the property attached as determined by the judge, to secure the payment of any judgment that the attaching creditor may recover in the action. Upon the filing of such counter-bond, copy thereof shall forthwith be served on the attaching creditor or his lawyer. Upon the discharge of an attachment in accordance with the provisions of this section the property attached, or the proceeds of any sale thereof, shall be delivered to the party making the deposit or giving the counter-bond, or the person appearing on his behalf, the deposit or counter-bond aforesaid standing in place of the property so released. Should such counterbond for any reason be found to be, or become, insufficient, and the party furnishing the same fail to file an additional counter-bond, the attaching creditor may apply for a new order of attachment.

or

Second. To quash the attachment on the ground that it was irregularly or improvidently issued, as provided for in Section 13 of the same Rule:

SEC. 13. Discharge of attachment for improper or irregular issuance. - The party whose property has been attached may also, at any time either before or after the release of the attached property, or before any attachment shall have been actually levied, upon reasonable notice to the attaching creditor, apply to the judge who granted the order, or to the judge of the court in which the action is pending, for an order to discharge the attachment on the ground that the same was improperly or irregularly issued. If the motion be made on affidavits on the part of the party whose property has been attached, but not otherwise, the attaching creditor may oppose the same by counter-affidavits or other evidence in addition to that on which the attachment was made. After hearing, the judge shall order the discharge of the attachment if it appears that it was improperly or

irregularly issued and the defect is not cured forthwith.

It would appear that petitioner chose the latter because the grounds he raised assail the propriety of the issuance of the writ of attachment. By his own admission, however, he repeatedly acknowledged that his justifications to warrant the lifting of the attachment are facts or events that came to light or took place after the writ of attachment had already been implemented.

More particularly, petitioner emphasized that four (4) years after the writ was issued, he had returned to the Philippines. Yet while he noted that he would have returned earlier but for the cancellation of his passport by the PCGG, he was not barred from returning to the Philippines. Then he informed the Sandiganbayan that while the case against him was pending, but after the attachment had already been executed, the government lost two (2) cases for fraud lodged against him before the U.S. Courts, thus invoking *res judicata*. Next, he also pointed out that the government is estopped from pursuing the case against him for failing to prosecute for the number of years that it had been pending litigation.

It is clear that these grounds have nothing to do with the issuance of the writ of attachment. Much less do they attack the issuance of the writ at that time as improper or irregular. And yet, the rule contemplates that the defect must be in the very issuance of the attachment writ. For instance, the attachment may be discharged under Section 13 of Rule 57 when it is proven that the allegations of the complaint were deceptively framed,[30] or when the complaint fails to state a cause of action.[31] Supervening events which may or may not justify the discharge of the writ are not within the purview of this particular rule.

In the instant case, there is no showing that the issuance of the writ of attachment was attended by impropriety or irregularity. Apart from seeking a reconsideration of the resolution granting the application for the writ, petitioner no longer questioned the writ itself. For four (4) long years he kept silent and did not exercise any of the remedies available to a defendant whose property or asset has been attached. It is rather too late in the day for petitioner to question the propriety of the issuance of the writ.

Petitioner also makes capital of the two foreign judgments which he claims warrant the application of the principle of *res judicata*. The first judgment, in Civil Case Nos. 575867 and 577697 brought by Philguarantee before the Santa Clara County Superior Court, denied Philguarantee's prayer to set aside the stipulated judgment wherein Philguarantee and Chuidian agreed on the subject attached L/C. On March 14, 1990, the Court of Appeal of the State of California affirmed the Superior Court's judgment. The said judgment became the subject of a petition for review by the California Supreme Court. There is no showing, however, of any final judgment by the California Supreme Court. The records, including petitioner's pleadings, are bereft of any evidence to show that there is a final foreign judgment which the Philippine courts must defer to. Hence, *res judicata* finds no application in this instance because it is a requisite that the former judgment or order must be final.[32]

Second, petitioner cites the judgment of the United States District Court in Civil Case 86-2255 RSWL brought by petitioner Chuidian against PNB to compel the latter to pay the L/C. The said Court's judgment, while it ruled in favor of petitioner on the matter of Philguarantee's action-in-intervention to set aside the settlement agreement, also ruled in favor of PNB, to wit:

Under Executive Order No. 1, the PCGG is vested by the Philippine President with the power to enforce its directives and orders by contempt proceedings. Under Executive Order No. 2, the PCGG is empowered to freeze any, and all assets, funds and property illegally acquired by former President Marcos or his close friends and business associates.

On March 11, 1986, PNB/Manila received an order from the PCGG ordering PNB to freeze any further drawings on the L/C. The freeze order has remained in effect and was followed by a sequestration order issued

by the PCGG. Subsequently, Chuidian's Philippine counsel filed a series of challenges to the freeze and sequestration orders, which challenges were unsuccessful as the orders were found valid by the Philippine Supreme Court. The freeze and sequestration orders are presently in effect. Thus, under the PCGG order and Executive Orders Nos. 1 and 2, performance by PNB would be illegal under Philippine Law. Therefore PNB is excused from performance of the L/C agreement as long as the freeze and sequestration orders remain in effect. (Underscoring ours)

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Chuidian argues that the fact that the L/C was issued pursuant to a settlement in California, that the negotiations for which occurred in California, and that two of the payments were made at PNB/LA, compels the conclusion that the act of prohibiting payment of the L/C occurred in Los Angeles. However, the majority of the evidence and Tcachosh and Sabbatino compel the opposite conclusion. The L/C was issued in Manila, such was done at the request of a Philippine government instrumentality for the benefit of a Philippine citizen, the L/C was to be performed in the Philippines, all significant events relating to the issuance and implementation of the L/C occurred in the Philippines, the L/C agreement provided that the L/C was to be construed according to laws of the Philippines, and the Philippine government certainly has an interest in preventing the L/C from being remitted in that it would be the release of funds that are potentially illgotten gains. Accordingly, the Court finds that the PCGG orders are acts of state that must be respected by this Court, and thus PNB is excused from making payment on the L/C as long as the freeze and sequestration orders remain in effect.[33] (Underscoring ours)

Petitioner's own evidence strengthens the government's position that the L/C is under the jurisdiction of the Philippine government and that the U.S. Courts recognize the authority of the Republic to sequester and freeze said L/C. Hence, the foreign judgments relied upon by petitioner do not constitute a bar to the Republic's action to recover whatever alleged ill-gotten wealth petitioner may have acquired.

Petitioner may argue, albeit belatedly, that he also raised the issue that there was no evidence of fraud on record other than the affidavit of PCGG Chairman Gunigundo. This issue of fraud, however, touches on the very merits of the main case which accuses petitioner of committing fraudulent acts in his dealings with the government. Moreover, this alleged fraud was one of the grounds for the application of the writ, and the Sandiganbayan granted said application after it found a prima facie case of fraud committed by petitioner.

In fine, fraud was not only one of the grounds for the issuance of the preliminary attachment, it was at the same time the government's cause of action in the main case.

We have uniformly held that:

x x x when the preliminary attachment is issued upon a ground which is at the same time the applicant's cause of action; e.g., "an action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty," or "an action against a party who has been guilty of fraud in contracting the debt or incurring the obligation upon which the action is brought," the defendant is not allowed to file a motion to dissolve the attachment under Section 13 of Rule 57 by offering to show the falsity of the factual averments in the plaintiff's application and affidavits on which the writ was based - and consequently that the writ based thereon had been improperly or irregularly issued - the reason being that the hearing on such a motion for dissolution of the writ would be tantamount to a trial of the merits of the action. In other words, the merits of the action would be ventilated at a mere hearing of a motion, instead of at the regular trial.[34] (Underscoring ours)

Thus, this Court has time and again ruled that the merits of the action in which a writ of preliminary attachment has been issued are not triable on a motion for dissolution of the attachment, otherwise an applicant for the lifting

of the writ could force a trial of the merits of the case on a mere motion.[35]

It is not the Republic's fault that the litigation has been protracted. There is as yet no evidence of fraud on the part of petitioner. Petitioner is only one of the twenty-three (23) defendants in the main action. As such, the litigation would take longer than most cases. Petitioner cannot invoke this delay in the proceedings as an excuse for not seeking the proper recourse in having the writ of attachment lifted in due time. If ever laches set in, it was petitioner, not the government, who failed to take action within a reasonable time period. Challenging the issuance of the writ of attachment four (4) years after its implementation showed petitioner's apparent indifference towards the proceedings before the Sandiganbayan.

In sum, petitioner has failed to convince this Court that the Sandiganbayan gravely abused its discretion in a whimsical, capricious and arbitrary manner. There are no compelling reasons to warrant the immediate lifting of the attachment even as the main case is still pending. On the other hand, allowing the discharge of the attachment at this stage of the proceedings would put in jeopardy the right of the attaching party to realize upon the relief sought and expected to be granted in the main or principal action. It would have the effect of prejudging the main case.

The attachment is a mere provisional remedy to ensure the safety and preservation of the thing attached until the plaintiff can, by appropriate proceedings, obtain a judgment and have such property applied to its satisfaction.[36] To discharge the attachment at this stage of the proceedings would render inutile any favorable judgment should the government prevail in the principal action against petitioner. Thus, the Sandiganbayan, in issuing the questioned resolutions, which are interlocutory in nature, committed no grave abuse of discretion amounting to lack or excess of jurisdiction. As long as the Sandiganbayan acted within its jurisdiction, any alleged errors committed in the exercise of its jurisdiction will amount to nothing more than errors of judgment which are reviewable by timely appeal and not by special civil action of certiorari.[37]

Moreover, we have held that when the writ of attachment is issued upon a ground which is at the same time the applicant's cause of action, the only other way the writ can be lifted or dissolved is by a counterbond, in accordance with Section 12 of the same rule.[38] This recourse, however, was not availed of by petitioner, as noted by the Solicitor General in his comment.[39]

To reiterate, there are only two ways of quashing a writ of attachment: (a) by filing a counterbond immediately; or (b) by moving to quash on the ground of improper and irregular issuance.[40] These grounds for the dissolution of an attachment are fixed in Rule 57 of the Rules of Court and the power of the Court to dissolve an attachment is circumscribed by the grounds specified therein.[41] Petitioner's motion to lift attachment failed to demonstrate any infirmity or defect in the issuance of the writ of attachment; neither did he file a counterbond.

Finally, we come to the matter of depositing the Letter of Credit in an interest-bearing account. We agree with the Sandiganbayan that any interest that the proceeds of the L/C may earn while the case is being litigated would redound to the benefit of whichever party will prevail, the Philippine government included. Thus, we affirm the Sandiganbayan's ruling that the proceeds of the L/C should be deposited in an interest bearing account with the Land Bank of the Philippines for the account of the Sandiganbayan in escrow until ordered released by the said Court.

We find no legal reason, however, to release the PNB from any liability thereunder. The Deed of Transfer, whereby certain liabilities of PNB were transferred to the national government, cannot affect the said L/C since there was no valid substitution of debtor. Article 1293 of the New Civil Code provides:

Novation which consists in substituting a new debtor in the place of the original one, may be made without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment by the new

debtor gives him the rights mentioned in Articles 1236 and 1237.

Accordingly, any substitution of debtor must be with the consent of the creditor, whose consent thereto cannot just be presumed. Even though Presidential Proclamation No. 50 can be considered an "insuperable cause", it does not necessarily make the contracts and obligations affected thereby exceptions to the above-quoted law, such that the substitution of debtor can be validly made even without the consent of the creditor. Presidential Proclamation No. 50 was not intended to set aside laws that govern the very lifeblood of the nation's commerce and economy. In fact, the Deed of Transfer that was executed between PNB and the government pursuant to the said Presidential Proclamation specifically stated that it shall be deemed effective only upon compliance with several conditions, one of which requires that:

(b) the BANK shall have secured such governmental and creditors' approvals as may be necessary to establish the consummation, legality and enforceability of the transactions contemplated hereby."

The validity of this Deed of Transfer is not disputed. Thus, PNB is estopped from denying its liability thereunder considering that neither the PNB nor the government bothered to secure petitioner's consent to the substitution of debtors. We are not unmindful that any effort to secure petitioner's consent at that time would, in effect, be deemed an admission that the L/C is valid and binding. Even the Sandiganbayan found that:

x x x Movant has basis in pointing out that inasmuch as the L/C was issued in his favor, he is presumed to be the lawful payee-beneficiary of the L/C until such time that the plaintiff successfully proves that said L/C is ill-gotten and he has no right over the same.[42]

In *Republic v. Sandiganbayan*,[43] we held that the provisional remedies, such as freeze orders and sequestration, were not "meant to deprive the owner or possessor of his title or any right to the property sequestered, frozen or taken over and vest it in the sequestering agency, the Government or other person."

Thus, until such time that the government is able to successfully prove that petitioner has no right to claim the proceeds of the L/C, he is deemed to be the lawful payee-beneficiary of said L/C, for which any substitution of debtor requires his consent. The Sandiganbayan thus erred in relieving PNB of its liability as the original debtor.

WHEREFORE, in view of all the foregoing, the petition is DISMISSED. The Resolutions of the Sandiganbayan dated November 6, 1998 and July 2, 1999 are AFFIRMED. The PNB is DIRECTED to remit to the Sandiganbayan the proceeds of Letter of Credit No. SFD-005-85 in the amount of U.S. \$4.4 million within fifteen (15) days from notice hereof, the same to be placed under special time deposit with the Land Bank of the Philippines, for the account of Sandiganbayan in escrow for the person or persons, natural or juridical, who shall eventually be adjudged lawfully entitled thereto, the same to earn interest at the current legal bank rates. The principal and its interest shall remain in said account until ordered released by the Court in accordance with law.

No costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Kapunan, and Pardo, JJ., concur.

[1] Santa Clara County Superior Court, Civil Case Nos. 575867 and 577697.

[2] U.S. District Court for the Northern District of California, Case No. C-85-3799EFL.

[3] Settlement Agreement and Mutual Release, Records, pp. 1785-1794; Exhibit "5-e", Vol. 4.

- [4] Records, Vol. I, pp. 165-166.
- [5] Annex "A"; Rollo, p. 42.
- [6] Annex "O"; Rollo, p. 133.
- [7] Records, Vol. 10, p. 4708.
- [8] Annex "C-1"; Records, Vol. 10, p. 4735.
- [9] Order and Judgment, Civil Case No. 86-2255RSWL, U.S. District Court, Central District of California; Records, p. 4992.
- [10] Supra., Records, pp. 5502-5003.
- [11] Pursuant to Proclamation No. 50 issued on December 8, 1986 by then president Corazon C. Aquino.
- [12] Deed of Transfer, Rollo, p. 122.
- [13] Rollo, p. 116.
- [14] Complaint, Records, Vol. I, pp. 162-167.
- [15] Records, Vol. 8, pp. 3951-3959.
- [16] Sandiganbayan Resolution, Rollo, p. 64.
- [17] Section 3, Rule 57, Rules of Court.
- [18] Sandiganbayan Resolution, Rollo, p. 61.
- [19] Ibid., p. 61.
- [20] Order of Attachment, Annex "B-1"; Rollo, pp. 66-67.
- [21] Motion to Lift Attachment, Rollo, p. 71.
- [22] Ibid., Rollo, p. 72.
- [23] Annex "D"; Rollo, pp. 77-79.
- [24] Annex "E", Resolution; Rollo, p. 83.
- [25] Annex "E-1"; Rollo, p. 88.
- [26] Annex "F"; Rollo, pp. 97-99.
- [27] Annex "F-1"; Rollo, pp. 100-101.
- [28] Supra.; Rollo, p. 107.
- [29] Jopillo, Jr. v. CA, 167 SCRA 247, 253 (1988).
- [30] Gruenberg v. CA, 138 SCRA 471, 478 (1985).
- [31] Acuña v. Yatco, 20 SCRA 867, 876 (1967).
- [32] Casil v. CA, 285 SCRA 264, 276 (1998); De Knecht v. CA, 290 SCRA 223, 237 (1998).
- [33] Ibid., pp. 5000-5001.

[34] *Mindanao Savings and Loan Association, Inc. v. CA*, 172 SCRA 480, 488-489 (1989).

[35] *Cuartero v. CA*, 212 SCRA 260, 267 (1992); *The Consolidated Bank and Trust Corp. v. CA*, 197 SCRA 663, 674 (1991).

[36] *Sta. Ines Melale Forest Products Corp. v. Macaraig, Jr.*, 299 SCRA 491, 515 (1998).

[37] *Commissioner on Internal Revenue v. CA*, 257 SCRA 200, 232 (1996).

[38] *Supra.*, *Jopillo, Jr. v. CA*, p. 254.

[39] Comments; *Rollo*, pp. 215-216.

[40] *Calderon v. IAC*, 155 SCRA 531, 540 (1987).

[41] *Santos v. Aquino, Jr.*, 205 SCRA 127, 135 (1992).

[42] Resolution, *Rollo*, p. 105.

[43] G.R. No. 88228, 186 SCRA 864, 869 (1990).⁴³

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